# United States Court of Appeals for the Second Circuit



**APPENDIX** 

## United States Court of Appeals Second Circuit

Dreyfus v. Von Finck, et al. Docket No. 75-7135

JOINT APPENDIX

PAGINATION AS IN ORIGINAL COPY

JOINT APPENDIX TO APPEAL OF ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, ENTERED JANUARY 21, 1975

Document	Appendix Reference
Copy of District Court Docket Sheet	A
Summons and Complaint (Dec. 12, 1973)	В
Order of Attachment (Dec. 20, 1973); Affidavit of William T. Coleman (Nov. 18, 197	3) C
Affirmation of John R. Horan (Jan. 15, 1974)	D
Order of Attachment (Jan. 15, 1974)	E
Defendants' Undertaking (Jan. 31, 1974)	F
Defendants' Undertaking (Feb. 5, 1974)	G
Defendants' Notice of Motion to Dismiss; Affidavit of William Schurtman (March 11, 19)	74) H
Affirmation of John R. Horan in Opposition to Defendants' Motion to Dismiss (April 18,	1974) I
Afficavit of William T. Coleman in Opposition to Defendants' Motion to Dismiss (April 23, 1974); Exhibits omitted	n J
Reply Affidavit of William Schurtman with Exhibits attached (April 26, 1974)	K
Memorandum of Judge Brieant (May 20, 1974)	L
Defendants' Notice of Settlement (May 28, 19	74) M
Plaintiff's Notice of Motion for Reargument (May 29, 1974)	N
Plaintiff's Petition for Reargument (June 10, 1974)	0
Defendants' Answer to Reargument Petition (June 21, 1974)	Р

Document	Appendix	Reference
Endorsement Order Granting Reargument (June 26, 1974)		Q
Amended Summons and Complaint and Stipulation of Counsel (July 24, 1974)		Ŗ
Defendants' Notice of Motion to Dismiss, with Exhibits; Affidavit of William Schurtman		
(Sept. 11, 1974) (Defendants' Appendix to Motion not reproduced)		S
Memorandum of Judge Brieant (Jan. 3, 1975)		T
Notice of Settlement (Jan. 15, 1975) and Corrected Order and Judgment (Jan. 21, 1975)		υ
Appellant's Notice of Motion to Remand; Affidavit of Eric Schnapper, Exhibits attached (May 13, 1975)		v
Affidavit of Alan Kanzer in Opposition to Motion to Remand (June 12, 1975)		W
Letter of William Schurtman stipulating to review of Military Law 59 (June 17, 1975)		x

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# Anited States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE No. 73 Civ. 5271

CLB

AUGUST VON FINCK, Munich, Germany; and MERCK, FINCK & CO., Munich, Germany, E Defendants

SUMMONS

·To the above named Defendant :

You are hereby summoned and required to serve upon WARTHY ARICKET JOHN R. HORAN the second section of the second

299 Park Avenue,

plaintiff's attorney , whose address is 30% MadizonxAvanue, New York, New York 19017

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAR 151974

Date: Dassider 11, 1973

B. Eduta Spenty Clerk

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[Seal of Court]

NOTE:-This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

WILLY DREYFUS,

Plaintiff.

CIVIL ACTION

AUGUST von FINCK, Munich, Germany; and MERCK, FINCK & CO.,

Munich, Germany,

Defendants.

NO. 73 Civ 5271 (CLB)

COMPLAINT

:

1. Plaintiff is Willy Dreyfus, a citizen of Basle, now residing in Montreux, Switzerland.

2. Defendant, August von Finck, is a resident and citizen of Munich, Germany.

3. Defendant, Merck, Finck & Co., is a banking and holding partnership or corporation which is domiciled in Munich or Berlin, Germany, and has various business dealings and activities in the United States, including New York City within the Southern District of New York.

4. Jurisdiction is founded on 28 U.S.C. §1332 and §1350 in that plaintiff is a citizen of Switzerland, defendants, August von Finck and Merck, Finck & Co., are citizens of Germany. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

- 5. Jurisdiction is also founded on 28 U.S.C. §1331 and §1350 in that part of the wrong complained of happened during, and as a result of, the occupation of Germany by the United States pursuant to the Four Power Occupation Agreement to which the United States was a signatory and also because they are acts which constituted violations of various treaties to which the United States and Germany were signatories, including, inter alia, The Hague Convention, Versailles Treaty, and the Kellogg-Briand Pact. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.
- 6. -Plaintiff, Willy Dreyfus, in 1938 and prior thereto, was a principal owner and manager of J. Dreyfus & Co., a private banking firm founded by his family in 1868. Said firm had its principal place of business in Berlin, Germany.
- 7. On or about January, 1938, said plaintiff, as a result of collective Nazi perfidy, was forced against his will, intent and desire to transfer at a completely unfair, illegal, inadequate and inequitable price the banking firm of J. Dreyfus & Co. and all of plaintiff's interest therein to defendants, August von Finck and Merck, Finck & Co.
- 8. Said unfair, illegal, inadequate and inequitable transfer was forced because plaintiff was Jewish and under the Nurnberg Laws and other decrees of Hitler could no longer own or operate a bank in Germany. Moreover, under said Laws and decrees, Jewish persons could not receive fair, adequate and

appropriate compensation for such transfers.

- 9. Said Nurnberg Laws and other decrees of Hitler forced the plaintiff and his family to leave Germany shortly after 1938 under threat of death or imprisonment.
- 10. Such actions were part of the scheme of Hitler and Germany to plan for and wage war in violation of, and contrary to the treaties set forth in paragraph 5 of the complaint.
- 11. As stated in paragraph 7 above, defendants, August von Finck and Merck, Finck & Co., wrongfully, unfairly, illegally and inequitably acquired all rights, title and interest of Willy Dreyfus in J. Dreyfus & Co. pursuant to said Nurnberg Laws and decrees of Hitler which decrees and laws were illegal and contrary to the laws of nations, treaties to which the United States and Germany were signatories, and humanity, and were part of the scheme to wage war against humanity and most of the nations of the civilized world.
- 12. The total compensation paid plaintiff and J. Dreyfus & Co. for their valuable banking business was illegal, unfair, inequitable and inadequate in that it was more than \$1,500,000 less than the appropriate amount of compensation which should have been paid for said business.
  - 13. When World War II ended in 1945, plaintiff sought adequate and appropriate compensation from defendants, August von Finck and Merck, Finck & Co., but even though the parties negotiated an agreement in August, 1948, which, though not completely fair

and equitable, would have in part compensated plaintiff, Willy Dreyfus, for the wrong done him, said defendants, August von Finck and Merck, Finck & Co., nevertheless, refused to honor said agreement and, in fact, renounced it.

- 14. Despite the fact that the Allied military authorities occupied Germany, plaintiff's claim was never properly and appropriately adjusted or compensated for.
- knew that as the result of Hitler's seizure, the improper treatment of Jews, the forced uprooting of plaintiff and his family and the dislocation caused by the war, plaintiff, Willy Dreyfus, was pressed for cash; therefore said defendants, August von Finck and Merck, Finck & Co., purposely delayed any fair adjustment of plaintiff's rightful claim in order to achieve an unfair, unjust, inadequate, and inequitable adjustment of his claim.
- have profited greatly from the wrongful actions described herein and now own assets and have an annual income which in part grew out of the assets of plaintiff and his private banking firm which were wrongfully acquired by defendants, August von Finck and Merck, Finck & Co., as a result of the perfidious Nurnberg Laws and other decrees of Hitler directed against Jews in Germany.
- 17. Defendants, August von Finck and Merck, Finck & Co., owe plaintiff in excess of \$1,500,000 as compensation and damages

for the illegal and unfair acts described in paragraphs 7 through 14 of this complaint.

18. Plaintiff Willy Dreyfus has made demand upon defendants, August von Finck and Merck, Finck & Co., but said defendants have refused to compensate plaintiff adequately.

WHEREFORE, plaintiff demands:

- (1) Judgment against defendants, August von Finck and/or Merck, Finck & Co., for a sum equal to either
- (a) the fair and equitable value of what was wrongfully taken from him in 1938 and transferred to defendants August von Finck and/or Merck, Finck & Co., with interest and costs, or
- (b) the fair and equitable value of what plaintiff was entitled to pursuant to the agreement entered into in 1948 described in paragraph 13 above, with interest and costs; and
  - (2) An accounting from defendants, August von Finck and Merck, Finck & Co., of the assets taken from plaintiff and J. Dreyfus & Co. in 1938, with gains and dividends achieved therefrom to date;
  - (3) Judgment for the amount of damages to plaintiff against any garnishee served in the proceeding to the extent they hold assets of, or owe money to, defendants, August von Finck and/or Merck, Finck & Co.; and
    - (4) Such other relief as in the premises is just and equitable.

William T. Coleman, Jr.

Dilworth, Paxson, Kalish, Levy & Coleman

2600 The Fidelity Building

Philadelphia, Pennsylvania 19109

JAR Horan

John Horan

Arkin and Horan

-300 Madison Avenue 2 59 Park Avenue

New York, New York 10017

Attorneys for Plaintiff

Sir:- Please take notice that the within is a (certified) duly entered in the office of the clerk of the within named court on true copy of a

Dated,

Yours, etc.

JOHN R. HORAN

Attorney for

Office and Post Office Address

299 Park Avenue

Borough of Manhattan New York, N. Y. 10017

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

for settlement to the Hon. of which the within is a true copy will be presented

one of the judges of the within named Court, at

on the

day of

19

Dated,

Yours, etc.,

JOHN R. HORAN

Attorney for

Office and Post Office Address

299 Park Avenue

Borough of Manhattan New York, N. Y. 10017

Attorney(s) for

SOUTHERN DISTRICT OF NEW YORK UNITED STATES DISTRICT COURT

WILLY DREYFUS,

plaintiff

against

MERCK, FINCK & CO., Munich, Germany; and AUGUST von FINCK, Munich, Germany,

Defendants

COMPLAINT

JOHN R. HORAN

Attorney for Plaintiff

Office and Post Office Address, Telephone

299 Park Avenue

Borough of Manhattan Now York, N. Y. 10017

(212) 593-6600

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

NG., 60 EXCHANGE, PLACE, N. Y. A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

73 Civ. 5271 €B- CLB

Plaintiff,

ORDER OF ATTACHMENT

AUGUST von FINCK, Munich, Germany; and MLRCK, FINCK & CO., Munich, Germany,

(Judge Brieant)

Defendants.

Plaintiff having moved for an Order of Attachment against the defendants in an action in this Court,

NOW, on reading and filing the summons and complaint herein, the affidavit of William T. Coleman, Jr., Esq., sworn to the 13th day of November, 1973, wherein it appears that a cause of action for a money judgment exists in favor of the plaintiff and against the defendants for the sum stated in the affidavit, to wit: \$1,500,000 plus interest and costs, and that the plaintiff is entitled to recover said sum above all counterclaims known to it;

And it being further shown by said affidavit and complaint that the plaintiff is entitled to an Order of Attachment against the property of the defendants on the ground that said defendants claim to be residents and domiciliaries of Munich, Germany, under Rule 64 FRCP and Sec. 6201 (1) of the Civil Practice Law and Rules of the State of New York;

NOW, on motion of Arkin & Horan, p.c. and Dilworth Paxson, Kalish, Levy and Coleman, attorneys for the plaintiff, it is

ordered that the plaintiff's undertaking be and the same hereby is fixed in the sum of \$ /50, 000 or of which amount the sum of \$ /20.000 in

Complaint and the Motion for Order of Attachment were

conditioned that the plaintiff will pay to the defendants all legal costs and damages which may be sustained by reason of the attachment, if the defendants recover judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendants' property and the balance thereof, being the sum of \$50,000 cm conditioned that the plaintiff will pay to the United States Marshal of the Southern District of New York all of his allowable fees and expenses, and it is further,

ORDERED that the United States Marshals of the Southern District of New York, upon the filing of plaintiff's undertaking as aforesaid, levy within the jurisdiction, at any time before final judgment, upon such property in which defendants have an interest and upon such debts owing to the defendants as will satisfy the plaintiff's demand of \$1,500,000, together with probable interest, costs and the fees and expenses of the United States Marshals of the Southern District of New York, and that they proceed thereon in the manner required by law.

Dated: New York, N. Y.

December 20 , 1973

15/ Charles L. Breant gr.

# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

v.

Plaintiff, : CIVIL ACTION

AUGUST von FINCK, : NO. 73 Civ 5271
Munich, Germany; and
MERCK, FINCK & CO.; :
Munich, Germany,

Defendants.

MOTION FOR ORDER OF ATTACHMENT AGAINST BANK OF AMERICA, CHASE MANHATTAN CORP., CHASE MANHATTAN BANK, N.A., CHASE INTERNATIONAL INVESTMENT CORP., CHEMICAL NEW YORK CORP., CHEMICAL BANK, EUROPEAN-AMERICAN BANKING CORP., EUROPEAN-AMERICAN BANK & TRUST CO., FIRST NATIONAL CITY CORP., FIRST NATIONAL CITY BANK, MARINE MIDLAND BANKS, INC., AND MARINE MIDLAND BANK-NEW YORK

Willy Dreyfus, plaintiff in the above-entitled matter, pursuant to Federal Rule of Civil Procedure, Rule 64, herewith requests this Court to issue an order of attachment against each of the following corporations: Bank of America, Chase Manhattan Corp., Chase Manhattan Bank, N.A., Chase International Investment Corp., Chemical New York Corp., Chemical Bank, European-American Banking Corp., European-American Bank & Trust Co., First National City Corp., First National City Bank, Marine Midland Banks, Inc., and Marine Midland Bank-New York, with respect to any property which any of them hold which belongs to defendants,

debt owed by any such corporation to either of the defendants, August von Finck or Merck, Finck & Co., and in support thereof states as follows:

- 1. Plaintiff has filed a complaint against defendants,
  August von Finck and Merck, Finck & Co., each of whom is a nonresident and non-domicilary of New York and of the United States.
- 2. On information and belief, Willy Dreyfus alleges that each of the following corporations holds securities, intangibles, choses in action, or other property or assets owed by defendants August von Finck and Merck, Finck & Co. and/or owes money to said defendants August von Finck and/or Merck, Finck & Co.:
- (a) Bank of America, a California corporation, with a place of business at 41 Broad Street New York, New York.
- (b) Chase Manhattan Corporation, Chase Manhattan Bank,
  N.A., and Chase International Investment Corp., each a New York
  corporation and with their principal places of business at Chase
  Manhattan Plaza, New York, New York.
- (c) Chemical New York Corp. and its subsidiary Chemical Bank, each a New York corporation and each having its principal place of business at 20 Pine Street, New York, New York.
- (d) European-American Banking Corp. and European-American Bank & Trust Co., each a New York corporation having their principal places of business at 10 Hanover Square, New York, New York.

National City Bank, each a New York corporation, and each with its principal place of business at 399 Park Avenue, New York, New York.

District of New York all of mis allowable rees,

- (f) Marine Midland Banks, Inc., a New York corporation with its principal place of business at One Marine Midland Center, Buffalo, New York, and with an office at 140 Broadway, New York, New York, and its subsidiary Marine Midland Bank-New York, with its principal place of business at 140 Broadway, New York, New York.
- 3. The jurisdiction of this Court is, as is set forth in paragraph 4 and 5 of the complaint, founded on (a) 28 U.S.C. §1332 and §1350, in that plaintiff is a citizen of Switzerland and defendants August von Finck and Merck, Finck & Co. are citizens of Germany and the claim in part involves damages and accounting for an e uitable tort by an alien; (b) 28 U.S.C. §1331 and §1350 in that part of the wrong complained of happened during and as a result of the occupation of Germany by the United States pursuant to the Four Power Occupation Agreement to which the United States was a signatory and also because there are alleged in the complaint wrongful acts committed by an alien, which acts constitute violations of various treaties to which the United States and Germany were signatories, including, inter alia, The Hague Convention, Versailles Treaty, and the Kellogg-Briand Pact.

The defendants have from time to time and are continuing to do business in the United States but are not registered in any state of the United States. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.

- 4. The plaintiff has a claim against the defendants
  August von Finck and Merck, Finck & Co. based upon the fact that
  in 1938, the defendants illegally and improperly acquired the
  banking firm of which plaintiff was a principal owner and manager
  in Berlin, Germany, which firm was called J. Dreyfus & Co. Said
  acquisition was accomplished wrongfully by the defendants because
  plaintiff was Jewish and under the Nürnberg Laws and other decrees
  of Hitler, he could no longer own or operate a bank in Germany.
  In addition, under said laws and decrees Jewish persons could not
  receive fair, adequate and appropriate compensation for such
  transfers.
  - 5. As a result, the defendants improperly, illegally, and inequitably acquired the interest of the plaintiff in the banking firm of J. Dreyfus & Co. by paying a sum which was at least \$1,500,000 less than what should have been paid.
  - 6. After the war, plaintiff attempted to seek adequate and appropriate compensation from the defendants, but even though they made an agreement to pay him, they refused to honor such agreement and thereafter never paid him anywhere near what was the value of the plaintiff's interest in J. Dreyfus & Co.

plus interest and costs, and in addition, plaintiff claims an accounting for the assets taken from plaintiff in 1938, assets and costs achieved therefrom to date. No previous application for relief sought herein has heretofore been made.

WHEREFORE, it is prayed that this Court issue an order of attachment against each of the following corporations:

Bank of America, Chase Manhattan Corp., Chase Manhattan Bank, N.A.,

Chase International Investment Corp., Chemical New York Corp.,

Chemical Bank, European-American Banking Corp., European-American

Bank & Trust Co., First National City Corp., First National City

Bank, Marine Midland Banks, Inc., and Marine Midland Bank-New York,

and that these corporations be ordered to hold assets and securities

belonging to the defendants and not pay over any money ordered to

the defendants until further order of this Court.

William T. Coleman, Jr.

Dilworth, Paxson, Kalish, Levy & Cole 2600 The Fidelity Building Philadelphia, Pennsylvania 19109.

John R. Horan Arkin and Horan 300 Madison Avenue New York, New York 10017 COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF PHILADELPHIA:

WILLIAM T. COLEMAN, JR., being duly sworn according

to law, deposes and says that

(1) he is one of the counsel in the above-entitled case;

(2) the plaintiff is a resident of Switzerland and,

therefore, is unavailable to take this affidavit in the United

States; and

(3) the facts set forth in the within motion for an order of attachment against each of the corporations named therein are true and correct to the best of his knowledge, information and belief.

p/ Milliam P. Coleman, Jr.

Sworn to and subscribed before me this /343 day

of Mar. 1973. (Signed) Rita C. L'Erario

Nutery Public, Philadelphia, Philadelphia Co. My Commission Expires Navember 22, 1976

NOTARY

The original order of attachment had a copy of the complaint attached. It is deleted in this record as an attachment to this order since it appears in the appendix as Appendix B. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

73 Civ. 5271 CLB

V.

AUGUST von FINCK, Munich, Germany; and MERCK, FINCK & CO., Munich, Germany,

AFFIRMATION

Defendants.

John R. Horan, an attorney duly admitted to practice in the State of New York, and before this Court affirms under the penalties of perjury as follows:

I am one of the attorneys of record in this action, and fully familiar with the relevant facts. This affirmation is submitted in support of an application to vacate the prior order of attachment signed by this Court on December 20, 1973, no proceedings having been commenced thereon, and to grant a further Order of Attachment to the limited extent of \$150,000 of plaintiff's demand, and requiring an undertaking by the plaintiff in an amount not to exceed \$15,000.

Upon information and belief, plaintiff is a Swiss resident who is retired and therefore is unable to meet the financial requirements of an undertaking in excess of \$15,000. He is willing to reduce and limit the amount of defendants' property which he seeks to attach to no more than \$150,000 although his demand in the complaint is for \$1,500,000.

Wherefore it is respectfully requested that this Court vacate the Order of Attachment of December 20, 1973, and issue an Order of Attachment against property of the defendants to the extent of \$150,000 and requiring an undertaking of plaintiff no more than \$15,000.

Dated: New York, N.Y.

January (5 , 1974

gohn R. Horan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MEW YORK

Plaintiff, : 73 Civ. 5271 CLB

ORDER OF ATTACHMENT

AUGUST von FINCK, Munich, Germany; and MERCK, FINCK & CO., Munich, Germany,

WILLY DREYFUS,

Defendants.

Plaintiff having moved for an Order of Attachment against the defendants in an action in this Court,

NOW, on reading and filing the summons and complaint herein, the affidavit of William T. Coleman, Jr., Esq., swown to the 13th day of November, 1973, in support of the motion for an Order of Attachment, and the affirmation of John R. Horan, dated January 11, 1974;

And it being further shown by said affidavit and complaint that the plaintiff is entitled to an Order of Attachment against the property of the defendants on the ground that said defendants claim to be residents and domiciliaries of Munich, Germany, under Rule 64 FRCP and Sec: 6201 (1) of the Civil Practice Law and Rules of the State of New York;

NOW, on motion of John R. Horan and Dilworth Paxson, Kalish Levy and Coleman, attorneys for the plaintiff, it is

ORDERED that the Order of Attachment dated December.

20, 1973 be and hereby is vacated, and it is further.

ORDERED that the plaintiff's undertaking be and the same hereby is fixed in the sum of \$15,000 of which amount the sum of \$10,000 is conditioned that the

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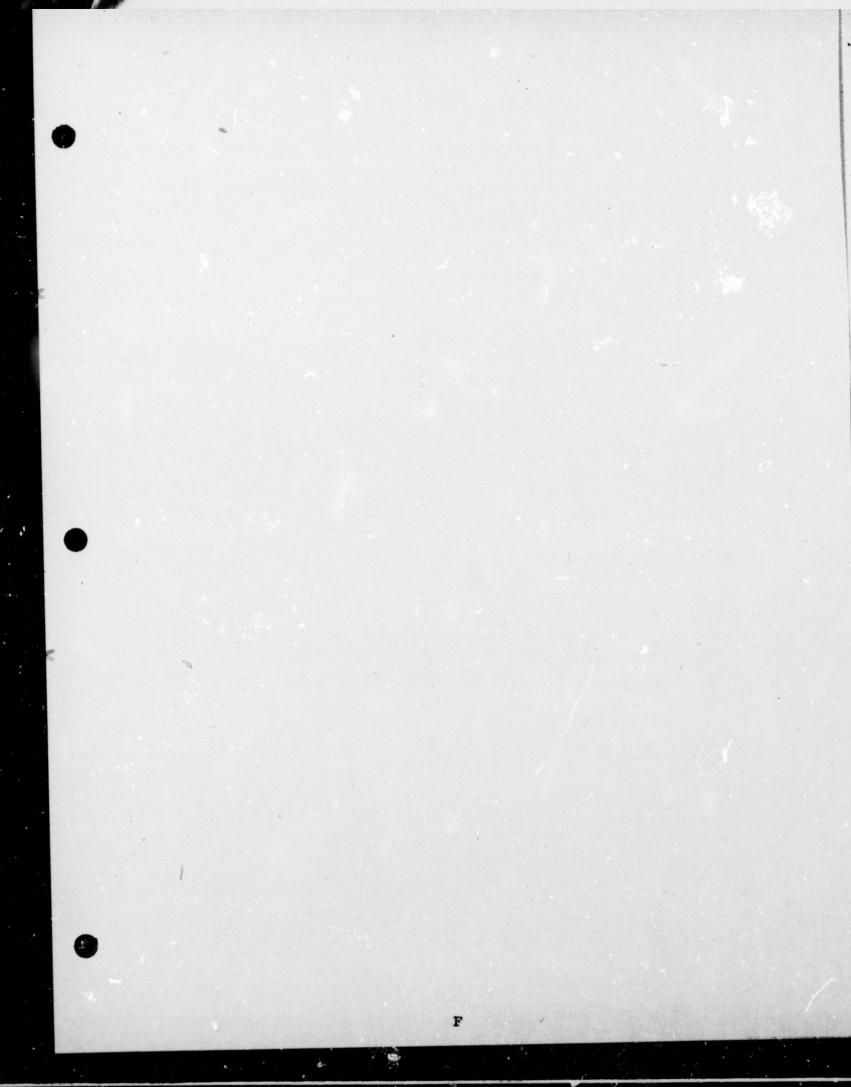
plaintiff will pay to the defendants all legal costs and damages which may be sustained by reason of the attachment, if the defendants recover judgment of it is finally decided that the plaintiff was not entitled to an attachment of the defendants' property and the balance thereof, being the sum of \$5,000 conditioned that the plaintiff will pay to the United States Marshal of the Southern District of New York all of his allowable fees and expenses, and it is further,

ORDERED that the United States Marshals of the Southern District of New York, upon the filing of plaintiff's undertaking as aforesaid, levy within the jurisdiction, at any time before final judgment, upon such property in which defendants have an interest and upon such debts owing to the defendants as will satisfy the plaintiff's demand to the extent of \$150,000, together with probable interest, costs and the fees and expenses of the United States Marshals of the Southern District of New York, and that they proceed thereon in the manner required by law.

Dated: New York, N.Y.
January 15, 1974

Charles C. Briegest Jr.

In the original Order of Attachment, a copy of the Complaint and the Motion for Order of Attachment were annexed. In this record, they are deleted since they appear independently as Appendix B and C respectively.



) simonamentalam

# NORTHWESTERN NATIONAL Insurance Company

MILWAUKEE, WISCONSIN

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Willy Droyfus,

Plaintiff

. -against-

August von Finck and Merck, Finck and Co.,

Defendants

EDHD NO. S-727809 US DIST COURT FILED 31,1974 JANUARY 31,1974 SDYNY

UNDERTAKING ON ATTACH ENT

73.CIV 5271 CU

11 SUM OF \$15,000

WHEREAS, the above-named Plaintiff (s) has applied or is about to apply in the above-entitled action to one of the Justices of this Court for an order of attachment against the property of the above-named Defendant (s), August von Finck and Merck, Finck and Co.

under the provisions of Article 62 of the CPLR of the State of New York and the Federal Rules of Civil procedure on the grounds of non residency

1. - In the event that the Plaintiff pays the Defendant (s) all legal costs and damages which may be sustained by reason of the attachment, if the Defendant (s) recover judgment, or, if it is finally decided that the Plaintiff was not entitled to an attachment of the Defendant (s) property, then this obligation to be void but otherwise to remain in full force and effect; the Surety covenants in that event it shall pay such legal costs and damages, the Surety covenants in that event it shall pay such legal costs and damages, or so much thereof as shall not have been paid by the Plaintiff, up to but not exceeding the sum of

TEN IHOUSAND

2. - In the event the Plaintiff pays the United States Marshal
for the Southern District of New York all of his allowable fees,
then this obligation is to be void, but otherwise to be in full force and
effect; the Surety covenants in that event it shall pay the United States
Marshal for the Southern District of New York such allowable
fees up to but not exceeding the sum of

FIVE THOUSAND

DOLLARS

EMECUTED IN DUPLICATE

CO KASSARAGE SERVERSE SERVERSE

11095

### NORTHWESTERN NATIONAL Insurance Company

MILWAUKEE, WISCONSIN

The obligations hereunder undertaken are severable and each covenant shall be deemed a separate undertaking as to the Defendant (s) herein and as to the United States Marshall for the Southern District of New York respectively.

Dated at New York, New York this 24th day of January 19 74

NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN

By:

Ralph L. Landrun, Jr.

Attorney-in-Fact

that he is Attorney-in-Fact of NORTHWESTERN: NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said company; that the seal affixed to said instrument is such corporate seal of said company; that it was so affixed by the authority granted to him in accordance with the by-laws of said corporation; that he signed his name thereto by like authority; that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 832 of the Laws of the State of New York for the year 1939 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, issued to NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN his certificate that said Company is qualified to become surety or guaranter on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked. ames (1) Notary Public JAMES F. BARTON Notary Public, State of New Yor? 1 No. 41-0130620 - Queens County HORTHYESTERN HATIONAL INSURANCE COMPANY Commission Expires March 30, 197/ S OF MILYAUXEE, WISCONSIN Financial Statement December 31, 1972. LIABILITIES AND SURPLUS ADMITTED ASSETS 49,268,315.18 68,271,224.02 3,412,504.91 6,344,963.00 Stocks (Convention Market Values) ..... Reci Estata............. 5,204,236.75 14,655,995.65 921,854.63 453,922.64 Accrued Interest........ Reinsurance Recoverable on Loss Payments. 1,750,038.44 2,170,043.26 Miscellaneous Assets ......... 1,500,000.00 --.. \$ 146,118,135.48 .. 14,300,000.00 25,559,510.36 45,359,510.36 Unassigned Surplus....SURPLUS TO POLICYHOLDERS.... Securities carried at \$4,740,092.94 are deposited with \$ 146,118,135.48 States or other Authorities as required by law ... TOTAL ..... POWER OF ATTORNEY KNOW ALL MEN BY THESE PRESENTS, That NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN, a Wisconsincorporation, does hereby make, constitute and appoint. Ralph L. Landrum, Jr., of New York, New York its true and lawful Attorney(s)-in-Fact; with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows: Any and all bonds, undertakings, recognizances or other written obligations in the nature thereof and to bind NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN theraby, and all of the acts of and Attorneys-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This appointment is made under and by authority of the following provisions of the By-Laws of the company, which are now in full force and effect; Article 1. The business and property of the company shall be managed and controlled by the board of directors. Article III, Section 1. ... The board of directors may appoint additional officers and agents to perform such duties as may be assigned by the This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN at a meeting duty held on May 14, 1953.

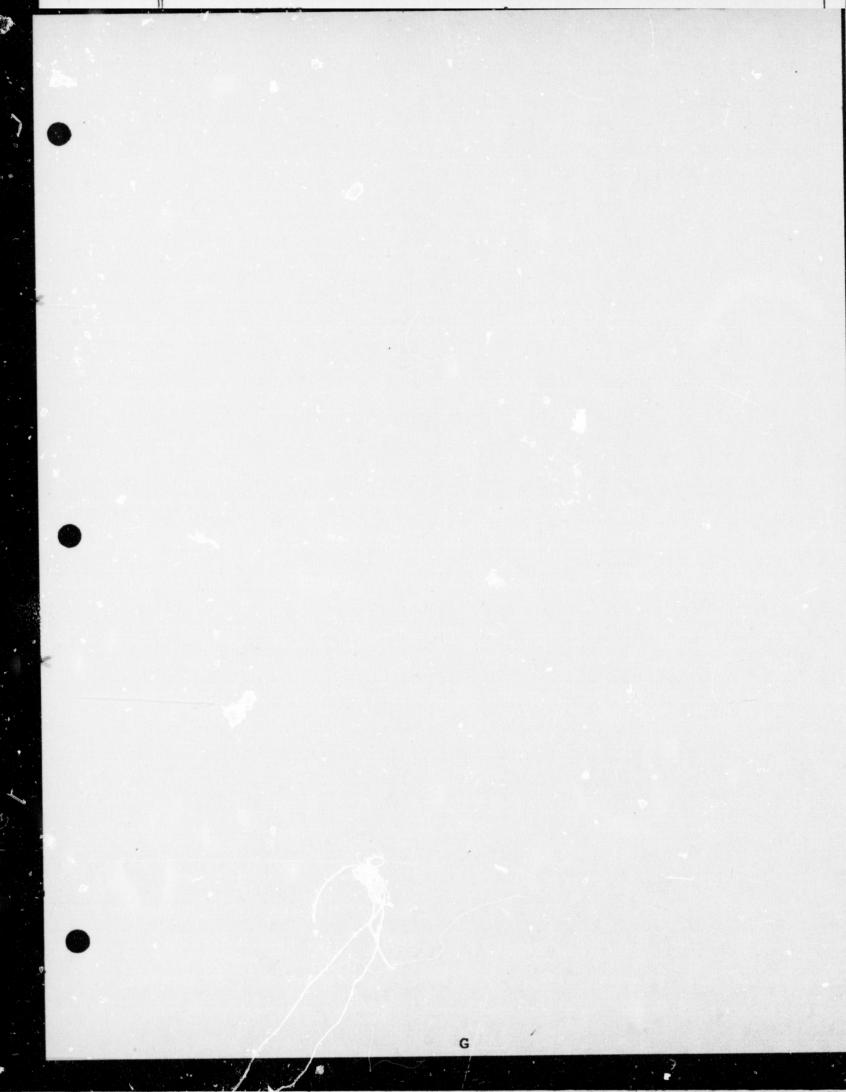
RESOLVED that the president, any vice-president or assistant vice-president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment to accordingly accor obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted to RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the company (i) when signed by the president, any vice-president or ossistant vice-president, and attested and sealed (if a seal be required) by any such person. (ii) when signed by the president, any vice-president or assistant vice-president, secretary or assistant secretary, and countersigned and secretary or assistant secretary; or (iii) when duly executed and sealed (if a seal to required) by one or more attorneys-in-fact or agents pursuant to and within the limits of sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or the authority avidenced by the power of attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and scal when so used shall have the same force and effect as though manually affixed. IN WITHESS WHEREOF, NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN has caused these presents to be signed by its proper officer, and its corporate seal to be hereunto affixed this 9th day of May. 1973

(SEAL)

On this 9th day of May, A.D., 1973 personally came before me, Donald L. STATE OF WISCONSIN, COUNTY OF MILWAUKEE-SS severely urbust and say: that they are the same officers of the compensation embessio, and that the second instrument by the authority of the board of bacctors of said corporation. Notary Public My commission expires December 23, STATE OF WISCONSIN, COUNTY OF MILWAUKEE-SS 1, the undersigned, assistant secretary of the NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE, WISCONSIN, a Wisconsin corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the provisions of the By-Laws of the company and the Resolutions of the board of directors set forth in the Power of Attorney, are now in force, and that the foregoing is a full, true and correct statement of the financial condition of said Company as of December 31, 1972.

Signed and sealed at the City of Milwaykee this 24th day of January 74 Signed and sealed at the City of Milwaukee this ... Frank P. Welch (SEAL) 11643 (5-72)



Il ... -- haliaf the facte will support New York Turisdiction

CHUBB & SON INC.

Manager

FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK M.S. District Court FEB 5 1974 S.D. of H.Y.

WILLY DREYFUS

Plaintiff

73 CIV 5271 (CLB)

-against-

AUGUST VON FINCK and MERCK, FINCK AND CO.

Defendants

On or about the 15th day of January, 1974 an order of attachment was issued in the above entitled case to the United States Marshall against property of defendants and the said defendants are about to apply to the said court for an order to discharge same;

NOW, THEREFORE, the FEDERAL INSURANCE COMPANY, having an office and place of business at No. 100 William Street, New York, New York 10038, does hereby pursuant to the Statute in such case made and provided, undertake that the defendants AUGUST VON FINCK and MERCK, FINCK AND CO. will pay to the plaintiff the amount of any judgment which may be recovered in the action against the defendants not exceeding the sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$150,000.00)

Dated New York, New York February 5, 1974.

FEDERAL INSURANCE COMPANY

BY 15 Lifered S. Americal Liliane S. Dammond

Assistant Secretary

AND 151 Skaiple H. Sekult

Stephen H. Serota Attorney-in-Fact

Approved As to

Form + Satticing
Raymol F. Bagbanet

Clerk

A TRUE COPY RAYLOND F. BURNIARDT, Clerk

			or remove the remove the second
	NOTARIAL ACKNO	WLEDGMENT	_
CITY, COUNTY & STATE OF NEW	YORK ss:		
On this 5th day of Pob	19 74, before me per	sonally came	nd
and Stephen H. So	eroca to me	known, who, being by me duly sworn,	did depose and respectively of
say that they are Assistant the FEDERAL INSURANCE COMPA they know the corporate seal of said so affixed by order and authority of the like order and authority.	ANY, the corporation describ	bed in and which executed the annexed fixed to said instrument in such corporate is corporation, and that they signed their na	instrument; that seal; that it was ames thereto by
		Sworn to little tecknowledged befolg the barbary and a discovery with the day of New 116. 43-1187315	en 7 York
	4	Qualified Beauting and S	ieali
1		Qualified 77 September 2015 (Note in Francisco Filed in New York Commission Expires More)	17
	CERTIFICA	Commission Expires March SO.	1975
CITY AND COUNTY OF NEW YOR	RK: ss		
I, the undersigned, Assistant lowing is a true excerpt from the B and amended May 27, 1971 and that		INSURANCE COMPANY, do hereby cery as adocted by its Board of Directors on and effect.	March 11, 1953
	"ARTICLE		
behalf of the Company vecuted in the name and the Proident or a Vice-frespense designations, resolution of the Board of as provided for in Section provided in such resolutions.	which it is authorized by law on behalf of the Company of President, jointly with the S except that any one or more f Directors or the Executive (on 3 below, may execute an or power of attorney.	her instruments other than as above for any or its charter to execute, may and shall be there by the Chairman or the Vice Chairm ecretary or an Assistant Secretary, under electrical or attorneys-in-fact designated in Committee, or in any power of attorney exercised bench, undertaking or other obligations.	an or their n any cuted on as
the name and on behalf or a Vice-President or an under their respective d	Assistant Vice-President, joi esignations."	f of the Company may and shall be executed the Company may and shall be executed the Chairman or the Presently with the Secretary or an Assistant Security with the Secretary or an Assistant Security with the Secretary or an Assistant Security with the Security wit	retary,
of and the same is a correct and tru	e copy of the whole of salo	copy of the POWER OF ATTORNEY with original Power of Attorney and that said F	
And I further certify that said iness in each of the States of the of Canada with the exception of Princeto, permitted or required by law.	united States of America, to ce Edward Island; and is also	DMPANY is duly licensed to transact fideli District of Columbia, Puerto Rico, and each duly licensed to become sole surety on bo 5th	nds, undertakings,
Given under my hand and se	eal of said Company at New	York, N.Y., this	day of
February	74	Y. RICHARDSON	
		Assistant Secretary	
Financial State	ement of Federal Insurance	ce Company as of December 31, 1972	
	STATUTOF		
		LIABILITIES AND SURPLUS TO PO	LICYHOLDERS
ASSETS	\$ 10.221	Unearned Premiums	
United States Treasury Bonds	ed	Outstanding Losses and Claims	
United States Government Secur New Housing Bonds	41,014		
State and Municipal Bonds	134,743	Ceded Reinsurance Balances Payable	
Other Bonds		Dividend Payable to Shareholder	
Preferred Stocks	206,826	Funds Held under Reinsurance Trea	
TOTAL INVESTMENTS	458,209	Non-Admitted Reinsurance	6,891
		Other Liabilities	19.084
Capital Stock of Affiliates: Great Northern insurance Co.	12,507	TOTAL LIABILITIES	419,666

Capital Stock ...... 13,987 Colonial Life Insurance Co. . . . . . . . . 17,201 5,592 The Chubb Corporation ..... Paid-in Surplus ..... 1.234 Earned Surplus ...... 110,853 2,985 Cash ..... Net Premiums Receivable ...... 77,146 Unrealized Appreciation of Reinsurance Recoverable on Paid 9,932 Losses ..... SURPLUS TO POLICYHOLDERS ...... 250,978 18,137 Other Assets ..... TOTAL .....\$970,644 TOTAL ADMITTED ASSETS .....\$670,644

Pacific Indemnity Company ...... 67,701

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.

Investments valued at \$30,553,000 are deposited with government authorities as required by law.

. Lack of personal julisdiction,

#### Certified Copy of

#### POWER OF ATTORNEY

Know all Men by these Presents, That the FEDERAL INSURANCE COMPANY, 100 William Street, New York, New York, a New Jersey Corporation, has constituted and appointed Authur A. Kuhne, Liliane S. Dammond, Richard G. Hight, Assistant Secretaries of this Company, S.H. Steffey Jr., W. Neai Hamilton, Robert P. Scavetta and Stephen H. Serota who are hereby appointed Attorneys-in-Fact of this Company for the purposes specified in this Power of Attorney, any two of them jointly to have full power to execute under such designations in its name to affix its corporate seal to, and to deliver for and on its behalf, as Surety or otherwise, bonds of either of the following classes, and any instruments amending or attering the same, and consents to the modification or alteration of any instruments referred to in said bonds or obligations, provided that no bond or undertaking executed under this authority shall exceed in amount the sum of Five Hundred Thousand Dollars (\$500,000.)

- Surety Bonds to the United States of America or any agency thereof, including those required or permitted under the laws or regulations relating to Customs or Internal Revenue; License and Permit bonds or other indemnity bonds under the laws, ordinances or regulations of any State. City, Town, Village, Board or other body or organization, public or private; bonds to Transportation Companies. Lost Instrument bonds, Lease bonds. Workmen's Compensation bonds, and bonds on behalf of Notaries Public, Sheriffs, Deputy Sheriffs and similar public officials.
- 2. Bonds and Undertakings filed in any suit, matter or proceeding in any Court, or filed with any Sheriff or Magistrate, for the doing or not doing of anything specified in such Bond or Undertaking.

In Witness Whereof, the said FEDERAL INSURANCE COMPANY has, pursuant to its By-Laws, caused these presents to be signed by its Assistant Vice President and Assistant Secretary and its corporate seal to be hereto affixed this

1st

day of

October

19 73.

FEDERAL INSURANCE COMPANY

By

George McClellan

Assistant Vice-President

STATE OF NEW YORK

County of New York

ss.:

John MacGregor

Assistant Secretary

On this 1st day of October 1975 before me personally came John MacGregor, to me known and by me known to be Assistant Secretary of the FEDERAL INSURANCE COMPANY, the Corporation described in and which executed the foregoing Power of Attorney and the said John MacGregor being by me duly sworn, did depose and say that he resides in the City of Short Hills, in the State of New Jersey; that he is Assistant Secretary of the FEDERAL INSURANCE COMPANY and knows the corporate seal thereof; that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; that he is acquainted with George McClellan and knows him to be Assistant Vice-President of said Company, and that the signature of said George McClellan subscribed to said Power of Attorney is in the genuine handwriting of said George McClellan and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Acknowledged and Sworn to before me on the date above written

. •

Notary Public

MARY K. BENDICK Notary Public, State of New York No. 24-0237960

Qualified in Kings County Certificate filed in New York County Commission Expires March 30, 1975

SEE NOTARIAL ACKNOWLEDGMENT AND CERTIFICATION
ON REVERSE SIDE

MILLY DRENDUE,

Plaintiff, : NOTICE OF COTICE TO DISHIES

-2.721020-

: 73 01v. 5271 (O.L.B.)

ACTUS! VOL FINON, Munich, Germany, 600. Munion, Germany,

Defendants.

5 7 7:

PIRASE TAKE MOULDS that upon the annexed affidavit of William Schritten, such to March 11, 1974, the annexed susmons and complaint, and all prior prosessings had herein, a motion will be made before the Monorable Charles L. Brissno, Unabed Spaces District Judge, in Room 906, Uniced States Courthouse, Foley Square, New York on Agree 23, 1974 av 9:30 c.m or as soon thereafter as sounsel can be heard, for an order n pursuant to Rule 10(2) of the Federal Rules of Civil Prodel to vacating service Act assesseing the complaint of the following grounds:

- 1. Lead to supplied patter in distribution,
- lack of protocol jurish outen;
- Fores was a water.

ica ifficient -minutes in the second 16. The claim asserted is therefore one white.

and for such other relief as may be proper.

Dated: New York, N.Y.

March 11, 1974

Yours, etc.

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.

CENTRAL CONTRACT CONTRACT CONTRACT

By:

A Member of the Firm Attorneys for Defendants 535 Fifth Avenue New York, N.Y. 10017 (212) 682-2323

[Note: On March 22, 1974 we are removing our offices to:

330 Madison Avenue New York, N.Y. 10017 (212) 582-2323]

TO: JOHN HORAN, ESQ.
Attorney for Plaintiff
299 Park Avenue
New York, N.Y. 10017

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

derendant barenersurp,

WILLY DREYFUS,

Munich, Germany,

Plaintiff,

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO.,

Defendants.

AFFIDAVIT

: 73 Civ. 5271 (C.L.B.)

STATE OF NEW YORK ) ss.:

WILLIAM SCHURTMAN, being duly sworn, deposes and says:

- 1. I am a member of the Bar of this Court and of the law firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for the defendants.
- 2. I submit this affidavit in support of defendants' motion to dismiss this action under Rule 12(b) of the Federal Rules of Civil Procedure on the following grounds:
  - 1. Lack of subject matter jurisdiction;
  - 2. Lack of personal jurisdiction;
  - 3. Forum for conveniens;
  - 4. Inellificient service of process.

attorney because all facts that are relevant to the motion straphelel are pleaded in plaintiff's complaint, are matters of record in this Court or are set forth in the annexed exhibits agreement in 1946, which defendants thereafter allegedly ref THE NATURE OF THIS . ons grace of ACTION

> to as you A. a This is an action commenced by a citizen and resident of Switzerland against two citizens and residents of West Germany based on events which took place entirely in Germany, more than 25 years ago. the read and gound or the contract the process the present the

5. Plaintiff purported to obtain jurisdiction over the foreign defendants by attaching their bank accounts in New York and by mailing copies of the summons and complaint to the defendants in West-Germany, second a 11 contain to a single

would be prepared to chow on the superprinte which that a line

bul THE COMPLAINT

eatisfartion, streate of limitations, laches and other offences,

. J:: 1 . . . . .

and san robus, sale 6. The complaint, a copy of which is annexed as Exhibit "A", alleges that plaintiff Willy Dreyfus is a citizen THE COMPRESSION OF of Basle, Switzerland and a resident of Montreux, Switzerland (Compl., 11). 12. On Estambar 1, 1923 stainfiff Fied his H

the intition of the second to the street of as benieved this. Defendants are residents and citizens of West . of a.m. sami financia Germany (Compl., ¶¶2 and 3). or le admandade de dama entre antique de la contra qui e la contra que el la contra de la contra del la contra del la contra del la contra del la contra de la contra de la contra de la contra del la cont

> The complaint alleges that prior to 1938 plaintiff was principal owner and manager of J. Creyfus & Co., a private banking firm with its principal place of business in Berlin, German; that in 1930 the Nazis compelled plaintiff, who was to transfer his banking firm to the defendants at a

that plaintiff and his family were forced to leave Germany;

that plaintiff sought appropriate compensation from the defendants

after the end of World War IP and entered into a settlement

agreement in 1948, which defendants thereafter allegedly refused

to honor and, in fact, Frenouned.

- \$1,500,000 and an accounting and backs damages in excess of
- why plaintiff waited from 1948 to 1974 to bring the present action. The nices of because Times 1975 1975

and acreased what reset gardee is by a second-bed reserve and

merits of plaintiff's claims at this stage of the case, defendants would be prepared to show at the appropriate time that such claims are barred by payment, release, settlement, accord and satisfaction, statute of limitations, laches and other defenses, and that plaintiff does not have any valid claims, under the Act of State doctring and for other reasons. In ("A" claims, THE COMMENCEMENT OF

12. On December 12, 1973 plaintiff filed his complaint and on January 15, 1974 plaintiff obtained an ex parts order of attachment from this Court in the amount of \$150,000 which was used to tie up bank accounts maintained by defendants in New York.

in any way connecting the validity of the attachment or consenting to jurisdiction, the defendants posted a bond of \$150,000 and the attachment was vacated by a consent order dated February 5, 1974.

0

to effect serve of process on the defendants in Germany by sending them copies of the summons and complaint by registered airmail which was received on February 19, 1974. Copies of the envelopes used by plaintiff's New York attorney are annexed as Exhibits "B" and "C". As shown in defendants' separate memorandum of law, such service was insufficient under Rule 4(1) of the Federal Rules of Civil Procedure.

THE COMPLAINT SHOULD BE
DISMISSED FOR LACK OF
SUBJECT MATTER JURISDICTION OR ON THE GROUND OF
FORUM NON CONVENIENS

- of law, there can be no diversity jurisdiction over a suit between two aliens nor has plaintiff shown any other proper basis for subject matter jurisdiction.
- basis for jurisdiction, then I respectfully request, for the reasons set forth in defendants' memorandum of law, that the Court decline to exercise such jurisdiction under the doctrine of forum non conveniens.
- residents of the United States arising out of events which took place in a foreign country over 25 years involving foreign law and foreign witnesses. There is absolutely no nexus between any aspect of this case and the United States.
- 18. The only transon this case is here at all is because defendants maintain some bank accounts in New York.

Plaintiff could readily serve process on defendants in West Germany where defendants reside and maintain the bulk of their assets, including the assets to which plaintiff now lays claim. Moreover, plaintiff does not allege, let alone establish, that the courts of the Federal Republic of Germany (West Germany) are not as qualified as this Court to mete out appropriate justice.

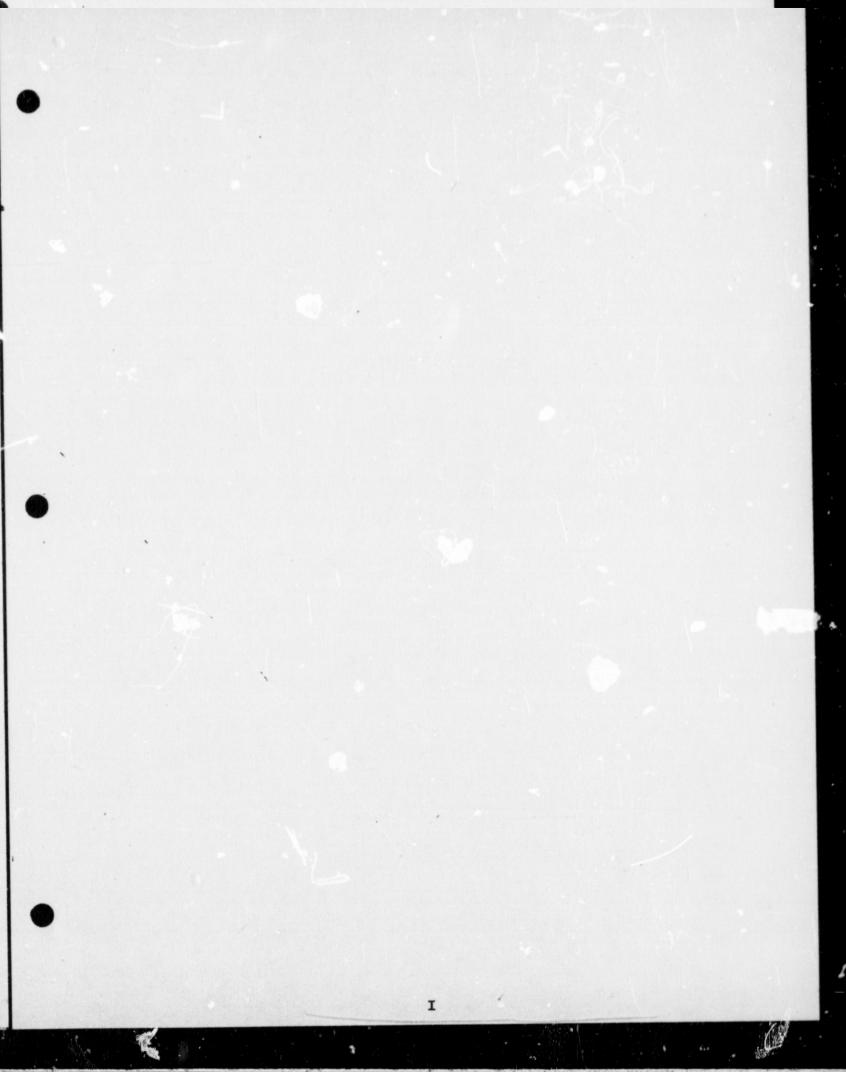
WHEREFORE, I respectfully request that the Court grant defendants' motion to dismiss the complaint on one or more of the grounds set forth in the motion.

CENTRAL SECTION OF COURTS CONTRALM

William Schurtman

Sworn to this 11th day of March, 1974

BERNARD R. DIAMORD
Notary Public. State of New York
No. 31-4503337
Qualified in May York County
Commission Expires March 30, 1975



WILLY DREYFUS,

Plaintiff, : 73 Civ. 5271 (C.L.B.)

-against-

AFFIRMATION
IN OPPOSITION
TO DEFENDANTS'
MOTION

AUGUST von FINCK,
Munich, Germany, and
MERCK, FINCK & CO.,
Munich, Germany,

Defendants.

John R. Horan, an attorney duly admitted to the practice of law before the courts of the State of New York and to this court, under the penalties of perjury affirms as follows:

- 1. I am co-counsel for plaintiff herein with William T. Coleman Jr., and this affirmation is submitted in opposition to defendants' motion to dismiss this action under Rule 12(b) of the Federal Rules of Civil Procedure.
- 2. Defendants' motion asserts, inter alia, that the complaint should be dismissed for lack of personal jurisdiction and insufficiency of process. The affidavit of William T. Coleman dated April 10, 1974, states that the United States Marshall was instructed to serve the Secretary of the State of New York to obtain jurisdiction pursuant to CPLR 313 (Section 307 of the New York Business Corporation Law being the underlying authority); on April 17, 1974, affirmant received the Marshal's return stating that the Secretary had refused service, an act unwarranted and unsupportable in law. However, as plaintiff's

MITTI DEGLEOS,

interrogatories have been served with respect to jurisdictional facts over the person of both defendants, and as, upon information and belief, the facts will support New York jurisdiction over both defendants under CPLR, 301, 302 and 313, the issue of this attempted service may be moot.

3. Plaintiff is now in the process of arranging for service of the summons and complaint upon the individual and corporate defendant in Munich Germany pursuant to the New York Business Corporation Law Section 307 and CPLR 308.

Wherefore, it is requested that all issues as to personal jurisdiction and service of process be deferred, as unripe for determination, pending completion of the service procedures now being initiated by plaintiff.

Dated: New York, N. Y. April 18, 1974

John R. Horan

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

AFFIDAVIT OF WILLIAM T.

COLEMAN, JR.

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

73 Civ. 5271 (C.L.B.)

Defendants.

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF PHILADELPHIA

WILLIAM T. COLEMAN, JR., being duly sworn, deposes and says:

- 1. I am a member of the Bar of the Supreme Court of the United States, the Supreme Court of the Commonwealth of Pennsylvania and, inter alia, the United States Court of Appeals for the Second Circuit, and I am a partner in the Philadelphia law firm of Dilworth, Paxson, Kalish, Levy & Coleman, co-counsel for the plaintiff.
- 2. I submit this affidavit contra defendants' motion to dismiss this action under Rule 12(b) of the Federal Rules of Civil Procedure which they seek on the following grounds:

- Lack of subject matter jurisdiction;\*
  - 2. Lack of personal jurisdiction;
  - 3. Forum non conveniens;
  - 4. Insufficient service of process.
- 3. I make this affidavit in my capacity as an attorney limited to facts which are in the plaintiff's Complaint, or are matters of record in this Court, or are set forth in the annexed exhibits, or are matters of general public knowledge or are matters of which the defendants are aware.

### The Bases for Federal Jurisdiction

- 4. Plaintiff is a citizen and resident of Switzerland and the defendants are citizens and residents of the Federal Republic of West Germany. August von Finck is the principal owner of defendant Merck, Finck & Co.
- 5. The Complaint alleges that plaintiff Willy Dreyfus is a citizen of Basle, Switzerland and a resident of Montreux, Switzerland (Com. 91).
- 6. Defendants are residents and citizens of the Federal Republic of West Germany (Com. ¶¶2 and 3).
- 7. The gist of the Complaint is that prior to 1938, plaintiff was a principal owner and manager of J. Dreyfus & Co., a private banking firm with its principal place of business in Berlin,

<sup>\*</sup> Defendants apparently mean lack of federal jurisdiction, i.e., no federal question and no diversity of citizenship.

Germany; that in 1938 the Nazis compelled plaintiff, who was

Jewish, to transfer his banking firm to the defendants at a

completely unfair, illegal, inadequate and inequitable price;

that defendants could do this because of the Aryan Laws promulgated by Hitler, which laws were contrary to certain treaties and

to the law of nations; that plaintiff and his family were forced

to leave Germany; that after World War II plaintiff sought appropriate compensation from the defendants and entered into a settlement agreement in 1948, which defendants thereafter wrongfully
refused to honor and, in fact, wrongfully renounced.

8. Such settlement agreement would have transferred to the plaintiff the following securities without cost:

"1,500 pieces fully paid Munich Insurance
Company Shares
RM 230,000 Loewenbraeu Munich shares
RM 5,000 Loewenbraeu
RM 210,000 Wuerzburger Hofbraeu shares
RM 100,000 Suedd. Zucker Industry shares
1,000 pieces Alliance Insurance shares
Agreement dated August 7, 1948, between the
partners of the former bank J. Dreyfus & Co.
and the partners of the bank Merck, Finck & Co.

Said securities were very valuable in 1948 and have increased in value ever since that date.

- As stated above, the defendants wrongfully renounced said agreement.
- 10. The United States government as one of the four occupying powers in Germany at the end of World War II, had certain rights and duties as imposed by the Four Power Occupation Agreement, including the responsibility to provide that the Germans give

restitution to those of its citizens whose property was wrong-fully taken or taken for inadequate compensation.

Germany in 1933, he embarked upon a scheme to push the German state beyond its then international legal borders and, in fact, embarked upon a scheme to conquer the world. This scheme was to be carried out in part by seizing the assets of the Jews of Germany and in other ways destroying the Jews of Germany, and depriving them of a livelihood.

plan was "nothing less than the conquest of the world." See Payne,

The Life and Death of Adolf Hitler (1973) pages 331, 329, 401, 422,

433, 440, 462, 464, 465-71, 555-56.

actions on the part of the Nazis and those who cooperated with them were in violation of at least four treaties, all of which had been signed by Germany and three of which were also signed by the United States of America. These treaties are set forth in the Complaint in paragraph 5. At the Nuremberg trial these treaties were the basis of the United States' successful claim that Germany had acted contrary to the law of nations, and the leaders thereof were war criminals.

14. The basis of plaintiff's Complaint is that the defendants cooperated with the Nazi regime and aided them in their plan, and that such aid and cooperation was in violation of said treaties.

15. The amount claimed as damages is in excess of \$1,500,000. 16. The claim asserted is therefore one which "exceeds the sum of . . . \$10,000, exclusive of interest and costs and arises under . . . treat[ies] of the United States" 28 U.S.C. §1331(a), "and is a civil action by an alien in tort only, committed in violation of the law of nations [and] . . . treat[ies] of the United States." 28 U.S.C. §1350. The Bases for Personal Jurisdiction and the Service of Process 17. In paragraph 2 of the Complaint, plaintiff alleger that the defendants have "various business dealings and activities in the United States, including New York City within the Southern District of New York." 18. Such business activities include, inter alia: (a) the defendants are engaged on a regular basis in business activities with at least the following banks which are located in New York: Bank of America; Chemical Bank; Chase Manhattan Bank; European American Banking Corporation; First National City Bank; Marine-Midland Bank; Swiss Bank Corporation. See the Bankers' Almanac and Yearbook, 1972-73, page 743; (b) the defendants have over the last several years, and are still involved in various under--5writing groups selling securities, inter alia,
in New York, and in connection therewith, the
defendant partnership, Merck, Finck & Co. has
appeared in "Tombstone Ads" in the New York
Times and the Wall Street Journal, which circulate in New York. Plaintiff, by Plaintiff's
First Interrogatories No. 12 has asked for a
complete listing of said ads over the last two
years. He is presently aware that at least the
following ads were placed which bear Merck, Finck
& Co.'s name:

- (1) The sale of \$50,000,000 6 1/2%

  Convertible Guaranteed Bonds 1989 of

  Asia Navigation International Limited which

  appeared in the Wall Street Journal on

  March 14, 1974;
- (2) The sale of DM 100,000,000 9 1/4%

  Deutsche Mark Bearer Bonds of 1974 of the

  Kingdom of Denmark which appeared in the Wall

  Street Journal on February 25, 1974;
- (3) The sale of \$50,000,000 8 5/8%

  Guaranteed Bonds 1989 of British Steel Corporation, which appeared in the Wall Street Journal on February 4, 1974;

- (4) The sale of \$25,000,000 8 1/2%

  Dollar Bonds Due January 15, 1989, of Eurofima which appeared in the Wall Street Journal on February 5, 1974;

  (5) The sale of \$75,000,000 Xerox Cor-
- (5) The sale of \$75,000,000 Xerox Corporation 5% Convertible Subordinated Debentures

  Due 1988, which appeared in the Wall Street

  Journal on December 20, 1973;
- (6) The sale of \$50,000,000 8 5/8%

  Guaranteed Bonds 1988 of the National Coal

  Board, which appeared in the Wall Street

  Journal on October 25, 1973;
- (7) The sale of DM 100,000,000 8 1/2%

  Deutsche Mark Bearer Bonds of 1973 of South

  African Iron and Steel Industrial Corporation,

  Limited, which appeared in the Wall Street

  Journal on October 31, 1973; copies of which

  "Tombstone Ads" are attached hereto as Exhibits

  A, B, C, D, E, F, and G.
- (c) By attachment on Chase Manhattan Bank, it was revealed that the defendants had on deposit at least \$150,000, and upon information and belief. I herewith state that the amount on deposit was much in excess of \$150,000.

19. The plaintiff has, by interrogatories, requested other information which would reveal that additional business activities have taken place in New York City on a regular basis.

20. The plaintiff on February 11, 1974, caused the United States Marshall to serve a copy of the Complaint by registered mail on each of the defendants in West Germany, at Postfach 227, 8000 Munchen 1, Germany, and these were received by defendants in West Germany. This service was in accordance with Federal Rules of Civil Procedure, Rule 4(1)(1)(D).

21. In addition, the plaintiff has instructed the United States Marshall to serve a copy of the Complaint on the

21. In addition, the plaintiff has instructed the United States Marshall to serve a copy of the Complaint on the Secretary of State of New York with the request that it be sent on to the defendants in West Germany. The United States Marshall has not yet filed the return of service. Said service is in accordance with the New York Civil Practice Laws & Rules, Section 311.

22. The process for the writ of foreign attachment was in accordance with the laws of New York, and therefore, as prescribed in Federal Rules of Civil Procedure, Rule 65.

## Facts Contra Defendants' Motion for Dismissal on Forum Non Conveniens

- 23. The allegations of the paragraphs 1 through 22 are incorporated herein by reference.
- 24. The Complaint alleges that the defendants' acts violated various treaties between the United States and Germany.

25. Since it was the German government which violated the treaties by waging war, it is not unreasonable for the plaintiff to assume and believe that the United States courts would give closer attention and more consideration to plaintiff's claim based upon violation of treaties, than the courts in Germany.

26. There were proceedings before the United States

Court of Allied High Commission for Germany - Court of Restitution

Appeals, in which plaintiff attempted to get full vindication of

his rights. These proceedings are relevant to plaintiff's claim

asserted here and were in English, as all of the judges of the said

court were United States citizens.

27. In view of the fact that some of the records of the said Court, or copies thereof, it is believed, are in the United States and to the extent they still exist, are among the records held in Washington, D. C. and, therefore, are available for inspection and discovery in the United States.

28. Plaintiff is aware that the originals of the files probably exist in West Germany and to the extent they are still existing, and are available for inspection and discovery there.

29. Many of the documents involved are in English, or have been translated into English.

30. Some of the witnesses who plaintiff will call to testify are presently living in the United States. For example, one witness would be George Eric Rosden, Esquire, who was the lawyer who represented the plaintiff before the Court of Restitution in an attempt to get complete satisfaction. Said lawyer presently lives in the State of Maryland.

31. Another witness will probably be Dr. Henry
C. Wallich, who is presently one of the members of the Federal
Reserve Board and whose father at one time had an interest in the

former bank J. Dreyfus & Co.

32. The plaintiff believes that Merck, Finck & Co. and August on Finck have considerable assets in the Schern District of New York and, therefore, the probability of collecting any judgment rendered in the United States clearly exists.

33. For the reasons set forth above, particularly in paragraphs 7, 8, 10-14, 24-32, 34-35, herein, there is a nexus between many aspects of this case and the United States.

34. It is clear that plaintiff's claim is based not upon foreign law (Germany), but is based in large part upon international treaties to which the United States was a signatory.

35. It is also clear that witnesses presently living in the United States will be called upon to testify.

36. If it is necessary to take the depositions of any of the defendants, or of the plaintiff, it is possible to reach the countries where they each live from the United States today in less than nine and one-half hours.

37. Plaintiff has propounded written interrogatories to defendants and believes that when they are answered, additional facts will appear of record which will support plaintiff's position

and be contrary to defendants' claim under the Rule 12 Motion filed herein.

WILLIAM T. COLEMAN, JR.

before me on information and belief, this 23rd (a)

of April, 1974.

Notary Public

Notary Public, Philadelphia, Philadelphia Co. My Commission Expires November 22, 1976 WILLY DREYFUS,

Plaintiff,

REPLY AFFIDAVIT

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

73 Civ. 5271 (C.L.B.)

STATE OF NEW YORK ) ss.:

WILLIAM SCHURTMAN, being duly sworn, deposes and says:

- 1. I am a member of the bar of this Court and of the law firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for defendants.
- 2. . I submit this reply affidavit in support of defendants' motion to dismiss this action on the following grounds:
  - a) Lack of subject matter jurisdiction;
  - b) Lack of personal jurisdiction;
  - c) Forum non conveniens;
  - d) Insufficient service of process.
- 3. I make this affidavit in my capacity as an attorney because all facts that are relevant to the motion are pleaded in plaintiff's complaint, are matters of record in this Court or are set forth in the annexed exhibits.

COURT OF RESTUTION APPEALS

#### DACK OF GODOLOT INTILER CONTODICTION

- 4. Plaintiff has virtually abandoned his reliance on diversity of citizenship, recognizing that 28 U.S.C. \$1332 does not cover suits between two aliens.
- 5. Plaintiff continues to assert that there is federal jurisdiction under 28 U.S.C. §1331 because of alleged violations of treaties and under 28 U.S.C. §1350 because of alleged violations of treaties and the law of nations.
- 6. In our motion papers, which were served several weeks ago, we challenged plaintiff to tell the Court which provisions of which United States treaties are alleged to have been violated by defendants and the manner in which such violations are alleged to have occurred.
- with denunciations of Hitler and the Nazis, with which we take no issue, and although the complaint string-cites several treaties, there is still no specification by plaintiff of what treaty violations have allegedly occurred. I have reviewed the treaties cited in the complaint and I fail to see how they apply in any way to the facts alleged in the complaint. This is not a question of construing a treaty in one of two ways, as suggested by Mr. Coleman. The question is whether there is any connection between the treaties and the alleged acts of defendants. If there is such a connection, plaintiff has failed to allege it or to explain it in the affidavits opposing this motion.
  - 8. The burden of establishing subject matter jurisdiction is on the plaintiff and I respectfully submit that such burden has not been met for the reasons set forth in our

LACK OF PERSONAL JURISDICTION 9. To the extent that plaintiff asserts quasi in rem jurisdiction by virtue of his \$150,000 attachment, our position is that if there was no federal subject matter jurisdiction, then the attachment itself was improper. 10. We originally assumed that since plaintiff had gone to the trouble and expense of obtaining a \$150,000 attachment, plaintiff intended to rely solely on quasi in rem jurisdiction. It now appears from Mr. Coleman's answering affidavit that the plaintiff is also seeking to assert personal jurisdiction over defendants by virtue of CFLR 301. 11. While it is our contention that defendants are not subject to in personam jurisdiction under CPLR 301, I respectfully suggest that this issue be deferred until the Court has decided those branches of our motion dealing with lack of subject matter jurisdiction and forum non conveniens. If the Court should dismiss the complaint on either ground, then the question of personal jurisdiction will become moot. 12. Plaintiff has in the meantime served defendants with exhaustive interrogatories relating to the question of whether they do business in the United States in an ostensible effort to establish jurisdiction under CPLR 301. These interrogatories would be extremely burdensome to answer and are oppressive and harassing in nature. Defendants intend to object to these inter-13. rogatories on a number of grounds. Since they relate solely

York under CPLR 301, I respectfully suggest that the Court also defer ruling on such objections until it has decided the questions of subject matter jurisdiction and forum non conveniens.

#### FORUM NON CONVENIENS

- 14. The main arguments advanced by Mr. Coleman in opposition to defendants' contention that this Court should decline to concern itself with a suit between aliens, all of whom reside abroad, arising out of events which took place in a foreign country some 35 years ago, are:
  - that this case is governed by treaties to which the United States was a party (again, without any specification whatsoever of which provisions of which treaties are claimed to apply to the alleged actions of defendants);
  - b) that two possible witnesses reside in the United States (with no claim that either witness has personal knowledge of the acts complained of); and
  - c) a conclusory argument that this Court is more likely to do justice than a court of the Federal Republic of Germany (West Germany) without any evidence to support such a serious accusation.

insufficient to overcome the criteria for <u>forum non conveniens</u> established by the United States Supreme Court. See defendants' main and reply briefs.

#### INSUFFICIENT SERVICE OF PROCESS

- effected by a United States Marshal but offers no proof of service to support his assertion. Consequently, I submit that plaintiff has failed to rebut our contention that he failed to effect service on the defendants in accordance with the provisions of Rule 4(i) of the Federal Rules of Civil Procedure.
- 17. However, I assume that sooner or later plaintiff will presumably employ the correct method of serving a defendant abroad and I therefore ask the Court to focus, in the first instance, on the questions of subject matter jurisdiction and forum non conveniens. These questions can be decided on the papers now before the Court and, if decided in favor of defendants, will end this lawsuit.

## A BRIEF COMMENT ON MR. COLEMAN'S STATEMENT OF FACTS

- 18. Although I do not want to get into the merits of the case at this stage, I cannot permit one aspect to Mr. Coleman's affidavit to go unchallenged.
- 19. The complaint alleges that plaintiff and defendants entered into a settlement agreement in 1948 and that defendants thereafter wrongfully repudiated the settlement.

-

was puzzled by this allegation because, according to documents

settlement in the German courts and ultimately entered into a new settlement agreement dated February 12, 1951 which ended the litigation and settled all of plaintiff's claims against defendants. I annex as Exhibit "A" a copy of the 1951 settlement agreement, which is in the German language, and I annex as Exhibit "A-1" a certified English translation of the 1951 settlement agreement. I am informed and believe that defendants made, and plaintiff accepted, the payments called for by the settlement agreement thereby terminating the entire controversy. I annex as Exhibit "B" a copy of an opinion dated March 7, 1951 by the Court of Restitution Appeals of the United States Courts of the Allied High Commission for Germany which states, at page 2:

"The motion was set for hearing before us on the 12th day of February, 1951. Whereupon, in open court, the parties announced to the Court that they had arrived at an amicable settlement and they requested that a signed agreement be recorded. This was accepted and recorded."

and at page 4:

"It is further ordered that the joint motion of the parties to withdraw the Motion for Recall and for other appropriate relief be, and the same is hereby granted. The claimants petition is dismissed."

20. When I failed to find any reference to the 1951 settlement agreement in the complaint, I assumed that this was some sort of pleading strategy on the part of plaintiff.

Since defendants' present motion to dismiss is based solely on jurisdictional grounds, I did not refer to the 1951 settlement agreement in my moving papers, except to note that if it should become necessary for defendants to file an answer, they intend to raise affirmative defenses of payment, release of settlement,

accord and satisfaction and other derenses, including particularly a defense that the statute of limitations has long since run on a claim that is at least 25 years old. 21. Now, however, I am baffled by the fact that Mr. Coleman sees fit to submit his personal affidavit in which he accuses defendants of having "wrongfully renounced" the 1948 settlement agreement without once taking the trouble to advise the Court that the 1948 settlement agreement was superseded, after further litigation, by the 1951 settlement agreement. I know that Mr. Coleman is aware of the existence of the 1951 settlement agreement because that settlement was referred to in correspondence exchanged last year between Mr. Coleman and the defendants, when he threatened to sue them if they refused to satisfy plaintiff's latest set of demands. Since I cannot believe that an attorney of 22. Mr. Coleman's stature and reputation would intentionally mis-

Mr. Coleman's stature and reputation would intentionally mislead this Court by submitting an affidavit accusing defendants of dishonoring a 1948 settlement when he knows that it was superseded by a 1951 settlement, I assume there must be some other reason for such lack of disclosure. I think Mr. Coleman owes it to the Court and to the defendants to explain his failure to make such a disclosure in his affidavit.

#### CONCLUSION

23. For the reasons stated in defendants' original motion papers and in these reply papers, the complaint should be dismissed for lack of subject matter jurisdiction

- 7 .

or, in the alternative, on the ground of forum non conveniens.

William Schurtman

Sworn to this 26th day of April, 1974

> Notary Public, State of New York
> No. 31-4506337 Qualified in New York County Commission Expires March 39, 1975

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Nuraberg, 12. Pebruer 1951.

gez. Dr. Rosden gez. Dr. Berthold gez. Reisinger gez. Dr. Horn gez. Theo Lueb

### FIFTH AVENUE TRANSLATIONS



FIFTH AVENUE TRANSLATIONS LTD. 501 FIFTH AVENUE of 42ND STREET NEW YORK, NEW YORK 10017 (212) 637-5773

Ref.: 4474/r

State of New York SS. County of New York

Before me, a Notary Public in and for the aforementioned State and County, personally appeared RAOUL GLANT who, after being duly sworn, deposes and says:

he is a professional translator.

That he is thoroughly conversant with the GERMAN

and ENGLISH

languages. That he compared the attached

ENGLISH

version of the original GERMAN LANGUAGE

JUDICIAL SETTLEMENT dated Nuremburg, February 12, 1951

and found same to be a faithful and complete translation of the original document.

He declared all the above to be true, to the best of his knowledge and belief and stated that the entire document has been translated and nothing omitted.

Sworn to before me, on this

22nd day of February , 1974

Dublic Notary.

ALDERT D. I COTHE JR. SECON COOK Notary Probation S.

Control to the Control of the Contro

The Parties have concluded the following judicial Settlement:

ODICININI

1) The Respondents, being liable jointly and severally, shall pay by February 21, 1951, to Petitioners' Counsel, Theo Lueb, Esq., Attorney at Law, Munich, into a blocked account to be designated by him, the amount of

DM 490,000 .-- (in words: four hundred ninety thousand DM).

- 2) There exists in the USA an account in the approximate amount of \$2,300.--. It is not clear to the parties, whether this account is carried in the name of Petitioner or in that of the Respondent. In the event that this account should belong to the Petitioners' body of assets taken over by Merck, Finck + Co. and no rights of third parties exist to it, Respondents acknowledge that ownership to this account shall reside in the Petitioners ex tune.
- 3) By this settlement and its fulfillment there shall be discharged definitively /all the commitments of the parties to each other, be they based on the acquisition by the banking house of Merck, Finck + Co. of assets of the J. Dreyfus + Co. Bank, or on the employment relationship between the late Dr. Wallich and the Merck, Finck + Co. Bank or on previously concluded settlements, on legislation or case law presently existing or to emerge in future.
- 4) To the extent that the Petitioners have filed restitution petitio against third parties with respect to assets which the Respondent

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New York, New York 10017
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had taken over out of the assets of the banking firm of Dreyfus + Co., the rights on which such petitions are based shall also be deemed as satisfied by this settlement and the Petitioners pledge to withdraw such petitions immediately after fulfillment of this settlement. The Petitioners undertake furthermore not to assert such claims in the future.

- notes of blocking, effective as of the date of fulfillment of this settlement, which have been entered on the basis of the herewith settled restitution claim. The Petitioners undertake to institute all other legal proceedings and/or to participate therein, as may be necessary to place the Respondents in full enjoyment of the acquired assets; in particular, the Petitioners hereby release, pari passu with the fulfillment of this settlement, guarantee given by "Bayerische Staatsbank München (Bavarian State Bank) to the Bavarian State Office for Property Administration and Restitution. At the same time, the Petitioners hereby grant approval to revoke all security measures taken.
- 6) The parties are in agreement that after fulfillment of this settlement not only the Petitioners and their assigns, but also the IRSO and its successor organizations shall have no rights.

  In the event that such a person or organization were to assert claims or rights on the basis of the take-over of property which took place in the year 1938, the Respondents pledge to inform the

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FIFTH AVENUE TRANSLATIONS



Fifth Avenue Translations Ltd. 501 Fifth Avenue (at 42nd Street) New York, New York 10017 (212) 687-5773 the Petitioners and permit them to participate in such a proceedin of such type while the Petitioners undertake to reimburse any claims/as may validly be decreed against the Respondents in the last resort up to the limit of the amount of this settlement, as otherwise the Respondents would be liable to duplicate payment.

- 7) The banking firm of Merck, Finck + Co. shall have the right to withdraw from this settlement with effect for all Respondents, by means of statement to the Court of Restitution Appeals to be received there not later than on February 19, 1951, 12 o'clock noo if the promised ruling of the Bavarian State Ministry of Finance is not received by February 17, 1951 or if said ruling is negative
- 8) The costs of the parties are mutually cancelled.
- 9) The pending lawsuit shall be settled through the fulfillment of this settlement. The Petitioners shall withdraw their petition immediately after fulfillment of this settlement and the Respondent hereby waive any rights that may result to them from the decision of the Restitution Panel Munich of August 30, 1950.
- 10) The parties are in agreement that with this settlement and the fulfillment thereof all legal relationships between the parties shall be definitively settled.

Nuremburg, February 12, 1951.

REF. 4474/r

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Fifth Avenue Translations Ltd. 501 Fifth Avenue (at 42nd Street) New York, New York 10017 (212) 687-5773 Opinion No. 68

UNITED STATES COURTS OF THE ALLIED HIGH COMMISSION FOR GERMANY
IN THE
COURT OF RESTITUTION APPEALS

Case No. 49

ASSOCIATION J. DREYFUS & Co et als.

Claimant-Appellants

VS

MERCK, FIECK & Co.
August von FINCE

MERCK, FINCK & Co.
August von FINCH
Margarete von STENGEL
Elisabeth WINTERSTEIN
Wilhelm von THEIEMANN
Dr. Egon von RITTER

Restitutor-Appellees

Motion for Recall and Mandate from Decision of the Munich Restitution Chamber I.

Filed with the Clerk: 7 March 1951

Attorneys-at-Iaw Mr. George Eric Rosden, Washington, and Mr. Theo Iuco, Munich, for the Appellants.

Attorneys-at-law Dr. Max Reisinger, Munich, Dr. Martin Horn, Munich, Dr. Fritz Berthold. Munich, for the Appellees.

Refere COMM, President, HARDING, Justice, sitting as an Associate Judge, and FIANAGAN, Judge.

#### PER CURIAM

By Opinion No. 24 filed with the Clerk of this Court, we remanded this case to the Restitution Chamber at the Munich Landgericht I with specific mandates. The aforesaid Chamber failed and refused to follow the orders of this Court. It reaffirmed

its prior judgment, which this Court had reversed in the abovementioned epinion. Such was done in the Chamber's order of August 30, 1950.

The aggrieved appellants moved this Court to recall the case for appropriate action and in its motion suggested the remission on the part of the trial court.

The motion was set for hearing before us on the 12th day of February, 1951. Whereupen, in open court, the parties announced to the Court that they had arrived at an amicable settlement and they requested that a signed agreement be recorded. This was accepted and recorded. Since the document required the Bavarian Finance Minister's approval, the hearing was continued to the 26th of February to determine meanwhile whether or not the needed approbation would be given. The permission was given and the parties moved the Court to permit the aforesaid motion to be withdrawn. The Court noted the motion and refused to act thereon until disposition had been made of the question of the Chamber's refusal to follow the order of this Court, The Court of Restitution Appeals retains jurisdiction of all cases appealed to it until its mandates and orders are complied with by the courts below and/or German authorities, notwithstanding any established practice pertaining to the settlement of a case.

Article 3 of Regulation 7 (as amended by Regulation No. 8) (Official Gazette of the Allied High Commission for Germany, No. 27, Page 495, dated 20 July 1950) under Military Government Law No. 59, is as follows:

#### Decisions

<sup>1.</sup> Decisions, rulings, orders, judgments and advisory opinions of the Court of Restitution Appeals shall be by a majority vote of the member sitting, and shall be incorporated in written epinions, except in cases where such Court refuses to review a matter.

2. All opinions (rulings, orders, judgments and advisory opinions) of the Court of the Restitution Appeals rendered under Article 2 of this Regulation shall be published in a manner to be determined by the United States High Commissioner for Germany. They shall be published in English and German, but in case of any discrepancy the English text shall prevail.

3. All opinions of the Court of Restitution Appeals published pursuant to paragraph 2 of this Article shall, insofar as they involve the interpretation of Military Government law No. 59, be binding upon all German courts and authorities. "

It is not necessary to discuss the binding effect of the orders, judgments, opinions, and mandates of this Court as to publication under its Rule Number XXVII. For if any doubts existed as to when the opinions of this Court are effective, they have been dispelled by the enactment of Regulation No. 9 (Official Gazette of the Allied High Commission for Germany, No. 46, Pages 763/764, dated 31 January 1951) by the United States High Commissioner for Germany. It is as follows:

#### Article 1

1. Pursuant to paragraph 2 of Article 3 of Regulation No. 7 under Military Government Law Mc. 59, it is hereby determined that any opinion of the Court of Restitution Appeals rendered under Article 2 of Regulation No. 7 shall be deemed to be published when a copy thereof is filed with the Clerk of the Jourt of Restitution Appeals. Such copy shall be open to inspection by any member of the general public.

2. Reproduction and distribution of the aforesaid opinions shall be made in accordance with the rules of practice and procedure of the Court of Restitution Appeals.

#### Article 2

This Regulation is applicable within the Imender of Bavaria, Bremen, Hesse and Wuerttemberg-Baden. It shall be deemed to have become effective on January 1, 1950."

Since this is the first and only instance whorain a lower court has been remiss in complying with an opinion and order of the Court of Restitution Appeals, and since the procedure has now been clarified by the above-cited legislation, we refrain from taking

further action in the matter other than as follows:

The said second opinion and order of the Restitution Chamber at Munich Landgericht I, rendered on August 30, 1950, in this case, Filo No. of the Restitution Chamber I WKV 252/50, be and the same is hereby reversed.

It is further ordered that the joint motion of the parties to withdraw the Motion for Recall and for other appropriate relief bo, and the same is hereby granted. The claimants petition is dismissed.

No costs are charged for the proceedings in this Court; each party will bear his own fees and expenses.

IT IS SO ORDERED :



.UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

73 Civ. 5271-CLB

Plaintiff,

-against-

MEMORANDUM

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

Brieant, J.

By notice of motion dated March 11, 1974, heard on May 1, 1974, defendants moved for an order pursuant to Rule 12(b), F.R.Civ.P., vacating service and dismissing the complaint on four separate numbered grounds. Of these, No. 4 was waived at the hearing, and Nos. 2 and 3 were withdrawn without prejudice to renew after the completion of discovery in the event that the Court fails to dismiss the complaint on the first numbered ground, i.e., lack of subject matter jurisdiction.

This is an action between aliens. Plaintiff is a Swiss citizen, born in Germany, and originally a national of that

country. Defendants are a West German national, and a West German partnership or business entity. The complaint was filed December 12, 1973. On January 15, 1974, after an ex parte hearing before me, plaintiff obtained an order of attachment in the amount of \$150,000.00, which was levied upon bank accounts of defendants maintained in New York. The attachment was vacated by consent order dated February 5, 1974, after defendants posted a bond in that amount. Our jurisdiction over these defendants is probably guasi in rem, and extending only to the amount of the attachment pursuant to New York CPLR §6201(1) as limited by Rule 320(c)(l) thereof, made applicable to this Court by Rule 4(e)(2). F.R.Civ.P., although plaintiff now contends that defendants are international bankers who participate in the State of New York in public offerings of securities with sufficient regularity, as underwriters or members of a selling syndicate, so as to constitute presence in this District and render them amenable to personal jurisdiction by service in West Germany, pursuant to §301 New York CPLR, also applicable here pursuant to Rule 4(f), F.R.Civ.P., a contention defendants dispute.

The plaintiff seeks to recover damages for tortious

conduct, and also to enforce an agreement or stipulation made in August, 1948, in settlement thereof. If subject matter jurisdiction is sustained as to the tort claim, we would have pendent jurisdiction over the claim to enforce the stipulation or agreement of settlement.

As required by Rule 8(a)(1), F.R.Civ.P., plaintiff pleads that jurisdiction is founded on 28 U.S.C. §§1332 and 1350, and:

"... is also founded on 28 U.S.C. §1331 and \$1350 in that part of the wrong complained of happened during, and as a result of, the occupation of Germany by the United States pursuant to the Four Power Occupation Agreement to which the United States was a signatory and also because they are acts which constituted violations of various treaties to which the United States and Germany were signatories, including, inter alia, The Hange Convention, Versailles Treaty, and the Kellogg-Briand Pact. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars." (Complaint, ¶4)

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At the hearing on the motion, it was conceded that 28 U.S.C. §1332 could not be relied on. There is no diversity. The pleading shows on its face that all parties are aliens.

Section 1350 of Title 28, also relied on, reads as follows:

"Alien's Action for Tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

Likewise applicable is \$1331(a), which provides:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000. ... and arises under the Constitution, laws, or treaties of the United States."

There is federal subject matter jurisdiction, within the rule of <u>Bell v. Hood</u>, 327 U.S. 678 (1946). That is an issue which must be resolved by looking to "the way the complaint is drawn, to see if it is drawn so as to claim a right to recover under" treaties of the United States. <u>Eell v. Hood</u>, supra at 681.

"[T] he party who brings a suit is master to decide what law he will rely upon." <u>Bell v. Hood</u>, supra, at 681, quoted from <u>The Fair</u> v. <u>Kohler Die Co.</u>, 228 U.S. 22, 25. <u>Bell v. Hood</u> holds directly that where a complaint is so drawn, the federal court must entertain

the suit, because "the Court must assume jurisdiction to decide whether the allegations state a [claim] on which the Court can grant relief" (ibid, p.682). Whether the complaint states a claim must be decided after, not before, the Court has taken jurisdiction over the subject matter of the controversy. This District Court has subject matter jurisdiction, because the right of plaintiff to recover under his complaint will be sustained if the treaties of the United States are given one construction, and will be defeated if they are given another.

In the absence of a clear facial showing of subject matter jurisdiction, we would not have granted the order of attachment. What has occurred is that defendants have mistaken their remedy. The true thrust of their argument is directed towards whether the complaint pleads a tort claim arising under the treaties, upon which relief can be granted. As the issues have been briefed and argued fully, the Court will treat the motion as having been brought under Rule 12(b)(6), F.R.Civ.P.

We turn now to the complaint. Plaintiff pleads that in 1938, and prior thereto, he was a principal owner of J. Dreyfus & Co., a private banking firm, located in Berlin, Germany, and

founded by his family in 1868. He tells us that (97):

"... plaintiff, as a result of collective Nazi perfidy, was [in January 1938] forced against his will, intent and desire to transfer at a completely unfair, illegal, inadequate and inequitable price the banking firm of J. Dreyfus & Co. and all of plaintiff's interest therein to defendants."

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This inequitable transaction was forced upon him (98)

"because plaintiff was Jewish and under the Nürnberg Laws and other decrees of Hitler could no longer own or operate a bank in Germany, ... [nor] receive fair, adequate and appropriate compensation [for a sale thereof to defendants]."

Although defendants were apparently acting in a private capacity, it is adequately pleaded that they tortiously and inequitably, unfairly, illegally and wrongfully acquired his banking assets. We are told (¶11) that this conduct by defendants took place

"pursuant to said Nür berg Laws and decrees of Hitler which decrees and laws were illegal and contrary to the law of nations, treaties to which the United States and Germany were signatories; and humanity, and were part of the scheme to wage war against humanity and most of the nations of the civilized

It is further pleaded that following World War II, the parties negotiated an agreement of settlement which defendants refused to honor, and in fact, renounced.

analogous factually and legally to the claim pleaded in Bernstein

v. Van Heyghen Freres, S.A., 163 F.2d 246 (2d Cir. 1947), cert.

denied 332 U.S. 772, and also in Bernstein v. N.V. NederlandscheAmerikaansche, etc., 210 F.2d 375. As we are informed by Judge

Learned Hand (Van Heyghen, supra, p.248-9) acts of the sort

complained of on the part of defendants here were, at the time

they are alleged to have taken place, and prior to December 1938

"unlawful under the laws of the Reich itself," the place of the

tort. They were unlawful here, whether for convenience referred

to as fraud and deceit, intentional interference with or trespass

to property, constructive duress, and overreaching, or however

may be most convenient for purposes of discussion.

It is not clear that this tort is actionable in an American court. The <u>Bernstein</u> litigation of course, did not reach the question of whether such a claim arises under a treaty, or because of acts committed in violation of the law of nations

within the meaning of 28 U.S.C. §1350 relied on here. The latter issue did not arise in the <u>Bernstein</u> cases. There, diversity of citizenship was present. See 173 F.2d 78.

failure to state a claim. We refrain from quoting the reasoning; to do so would require us to incorporate the entire opinion.

Later, this Circuit expressed the same viewpoint in Bernstein v.

N.V. Nederlandsche-Amerikaansche, etc., 173 F.2d 71 (1949),

modified, 210 F.2d 375. Thereafter, a letter dated April 13,

1949, of the sort since known to scholars as a "Bernstein letter"

was issued by the U. S. Department of State, quoted in relevant

part in Bernstein v. N. V. Nederlandsche-Amerikaanishe, etc.,

210 P.2d 375, 376 (2d Cir. 1954). Based on the letter, "claims

assected in the United States for the restitution of identifiable

property (or compensation in lieu thereof) lost through force,

coercion or duress as a result of Nazi prosecution in Germany"

could be litigated.

The "Bernstein letter" was general as to its terms, and would be applicable in New York state court, or in this Court in a diversity case, but for subsequent expressions by the

Supreme Court indicative of its present view that the last Bernstein case was decided incorrectly, and the "letter" a nullity.

THE REPORT OF THE PARTY OF THE

The question was first considered in <u>Banco Nacional</u> de Cuba v. <u>Sabbatino</u>, 376 U.S. 398, 420 (1964) in which the Court said:

"This Court has never had occasion to pass upon the so-called <u>Bernstein</u> exception, nor need it do so now."

Recently, in First National City Bank v. Banco Nacional de Cuba,

406 U.S. 759 (1972) several opinions were delivered, all referring

to Bernstein. In that case, Mr. Justice Rehnquist, writing only

for himself, the Chief Justice and Justice White (on this point)

approved Bernstein, in reversing this Circuit (442 F.2d 530). But

Mr. Justice Douglas, con urring, considered Bernstein inapplicable,

and by implication, correct, while Mr. Justice Powell disagreed,

(p.773) and dissenters, Justices Brennan, Stewart, Marshall and

Blackmun wrote (p.776):

"The Court, nevertheless, affirms the Court of Appeals' rejection of the 'Bernstein' exception. Four of us in this opinion unequivocally take that step, as do Mr. unequivocally take that step, as do Mr. Justice Douglas and Mr. Justice Powell in their separate opinions concurring in the result or judgment."

Even if the dissenters, in <u>First National City Bank</u>, <u>supra</u>, misinterpret the opinion of Mr. Justice Douglas, it is now clear that at least five of the Justices reject that case. Thus, the law in a like case is returned to the rule enunciated by Judge Learned Hand in the first <u>Bernstein</u> case against <u>Van Heyghen</u>, <u>supra</u>, and accordingly, plaintiff here fails to state a claim, as did plaintiff in <u>Van Heyghen</u>.

We now turn to the secondary question, whether a claim is stated arising under treaties of the United States. Plaintiff has not called our attention to any particular provisions of any treaties to which the United States and Germany were signatories, which expressly create any private causes of action, for tort or otherwise. The United States is not a signatory to the Versailles Treaty referred to in the complaint, although it appropriated any benefits flowing to itself by its separate peace treaty with Germany of August 25, 1921, (15). The Hague Convention and the Kellogg-Briand Pact renouncing war as an instrument of international policy were the basis for imposing criminal sanctions on German war criminals, tried following World War II, but no case has been cited to our attention in which such treaties were relied upon as

Court would have jurisdiction under §1350 of Title 28 U.S.C., or otherwise.

plaintiff asks us to hold that this Court may imply a private cause of action in his favor under these treaties, as well as the Four Power Occupation Agreement, to which the United well as signatory (which was in effect at the time of the states was signatory (which was in effect at the time of the making of the 1948 contract of settlement, but not at the time of the tortious conduct in 1938). Only cases arising under the federal securities laws are cited in support of this invitation to exercise our judicial power in such grandiose fashion.

We find no authority, and none is cited to us in which a private cause of action arising out of extraterritorial acts, but justiciable in the federal courts, has been asserted successfully as arising by implication out of any international treaty.

When the international lawyers and diplomats desire to create a private right arising out of a treaty, they know how to do so. The classic example, of course, is the Warsaw Convention, by which private causes of action were created by express language by which private causes of action were created by express language of the Convention itself, against international air carriers for the benefit of passengers and shippers. See Chapter Three thereof,

and particularly Article 28(1) which fixes the venue for the private action.

The learning with respect to international compacts differs from the interpretation of legislative intent followed by our courts in implying private rights of action under remedial statutes such as the federal securities laws. An accepted principle of international law seems to be that to create a private right or obligation, the treaty, must, as in the case of the Warsaw Convention, express a clear intent so to do.

For example, in <u>Pauling v. McElroy</u>, 164 F.Supp. 390 (D.C.D.C. 1958), <u>aff'd 278 F.2d 252</u>, <u>cert. denied 364 U.S. 835</u>, the District Court considered it "doubtful" that the Court had 'jurisdiction, under 28 U.S.C. §1350, of a claim asserted by aliens, resident in the Marshall Islands, aggrieved by a proposed nuclear weapons test, and implied they failed to state a claim. The Court held (p.393):

"[5] 4. The provisions of the Charter of the United Nations, the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the international law principle of freedom of the seas relied on by plaintiffs are not self-executing and do not vest any of the plaintiffs with individual legal rights which they may

assert in this Court. The claimed violations of such international obligations and principles may be asserted only by diplomatic negotiations between the sovereignties concerned."

See also <u>Filhiol</u> v. <u>Maurice</u>, 185 U.S. 108 (1902) in which the Court failed to imply a private cause of action arising out of the Fifth Amendment and the Treaty with France of October 21, 1803 (Louisiana Purchase). The Supreme Court there held (p.111):

"Did it appear from plaintiffs! own statement that the case arose under the Constitution or a treaty of the United States? We do not think it did.

The Fifth Amendment prohibits the exercise of Federal power to deprive any person of property without due process of law, or to take private property for public use without just compensation; and the treaty of October 21, 1803, provided for the protection of the inhabitants of the territory ceded in the enjoyment of their property. Public Treaties, 200.

But no right, title, privilege or immunity was here asserted as derived from the Constitution or the treaty, as against these private individuals, who were impleaded as defendants, either specifically, or through averments that plaintiffs were ousted in violation of the treaty and of the Fifth Amendment, the provisions of which it was the duty of the Federal Government to observe.

The gravamen of the complaint was that

plaintiffs' ancestor had a perfect title, to which they had succeeded, and the appropriate remedy for illegal invasion of the right of possession was sought ... and so far as defendants were concerned, it was not charged that they took possession by direction of the Government, and plaintiffs set up no more than a wrongful ouster by merely private persons, remediable in the ordinary course, and in the proper tribunals."

Let the Bearing with the in the literal is seemed to be a superior of the latest was in such a literal and in which

In Z. & F. Assets Realization Corp. v. Hull, 114 F.2d 464 (D.C. Cir. 1940), aff'd. 311 U.S. 470 (1941) the Court of Appeals held as follows with respect to private disputes arising out of German reparations for the "Black Tom" explosion of 1916, and related events, payable under the Treaty with Germany of August 25, 1921 (p.470):

"A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of

municipal law, and which are capable of enforcement as between private parties in the courts of the country."

In Z. & F. Assets, the complaint was dismissed because no such express provisions were found in the treaty. See authorities collected in fn.27, 114 F.2d at 471. Cf. Khedivial Line S.A.E. v. Seafarers' Int'l Union, 278 F.2d 49 (2d Cir. 1960) [dictum, as no applicable treaty existed, and the acts complained of occurred in the United States]; King Features Synd. v. Valley Broadcasting Co., 43 F.Supp. 137, 138 (N.D. Tex. 1942).

There is no substantive right to recover for the claimed tort expressed in plaintiff's favor in any treaty provision to which the United States is a party. We decline to imply such a right. Accordingly, the complaint fails to state a tort claim [within 28 U.S.C. §1350 or otherwise] upon which relief can be granted. It follows that there is no pendent jurisdiction to entertain the contract claim, based on the stipulation or agreement of settlement made in 1948.

The complaint is, for the foregoing reasons, dismissed.

Settle a final Judgment on notice, which shall provide

that the bond to secure our order of February 5, 1974 vacating the attachment shall not be discharged or exonerated pending appeal.

Dated: , New York, New York May 70, 1974

CHARLES L. BRIEANT, JR.

U. S. D. J.

Plaintiff,

-against-

AUGUST von FINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany,

Defendants.

: 73 Civ. 5271 (C.L.B.)

: NOTICE OF SETTLEMENT

SIR:

ment will be presented for settlement at the office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York on May 30, 1974, at 10:00 c'clock in the forenoon.

Dated: New York, New York
May 28, 1974

Yours, etc.

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.
Attorneys for Defendants
330 Madison Avenue
New York, N.Y. 10017
(212) 682-2323

TO: JOHN R. HORAN, ESQ.
Attorney for Plaintiff
299 Park Avenue
New York, N.Y. 10017

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff, : 73 Civ. 5271 (C.L.B.)

-against-

AUGUST von FINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany,

Defendants.

ORDER AND JUDGMENT

Defendants having made a motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the complaint; and

This matter having come on for argument before this Court on May 1, 1974, and counsel for all parties having been heard, to wit,

William T. Coleman, Jr., Esq. and John R. Horan, Esq., attorneys for plaintiff, and

Walter, Conston, Schurtman & Gumpel, P.C. (William Schurtman, Esq. appearing), attorneys for defendants, and

This Court having considered the complaint and the affidavits and briefs filed in sur ort of and in opposition to said motion, and the argument of counsel, and due deliberation having been had thereon, and upon reading and filing the memorandum decision of this Court dated May 20, 1974, it is

ORDERED AND ADJUDGED that the complaint and this action be and hereby are dismissed with prejudice, and it is further

Defendants.

Defendants having made a motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the complaint; and .

This matter having come on for argument before this Court on May 1, 1974, and counsel for all parties having been heard, to wit,

William T. Coleman, Jr., Esq. and John R. Horan, Esq., attorneys for plaintiff, and

Walter, Conston, Schurtman & Gumpel, P.C. (William Schurtman, Esq. appearing), attorneys for defendants, and

This Court having considered the complaint and the affidavits and briefs filed in support of and in opposition to said motion, and the argument of counsel, and due deliberation having been had thereon, and upon reading and filing the memorandum decision of this Court dated May 20, 1974, it is

ORDERED AND ADJUDGED that the complaint and this action be and hereby are dismissed with prejudice, and it is further

ORDERED that the fond posted by defendants to secure this Court's order of February 5, 1974 vacating this Court's

order of attachment dated January 15, 1974 shall not be discharged or exonerated pending plaintiff's appeal.

Dated: New York, New York

May , 1974

U.S.D.J.

Plaintiff Willy Dreyfus c/o John R. Horan, Esq. 299 Park Avenue New York, N.Y. 10017

Defendants August von Finck and Merck, Finck & Co. c/o Walter, Conston, Schurtman & Gumpel, P.C. 330 Madison Avenue New York, N.Y. 10017 UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff, : 73 Civ. 5271 (C.L.B.)

-against-

NOTICE OF MOTION

AUGUST von FINCK, Munich, Germany and : MERCK, FINCK & CO., Munich, Germany,

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the memorandum of law to be submitted herewith, the undersigned attorneys for the plaintiff will move this court at a Motion Part in Room 1505, of the United States Courthouse, Foley Square, New York, N. Y., on June 21, 1974, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 9(m) of the General Rules of this court for re-argument of this court's memorandum decision filed May 20, 1974, upon the ground that the court overlooked certain controlling law and decisions, more specifically set forth in the memorandum of law submitted herewith, and for such order and further relief as this court deems just.

Dated: New York, N. Y. May 29, 1974

TO: WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.
Attorneys for Defendants
330 Madison Avenue
New York, N. Y. 10017
Tel: (212) 682-2323

YOURS, ETC.

John R. Horan
Attorney for Plaintiff
299 Park Avenue
New York, N. Y. 10017
Tel: (212) 593-6600

William T. Coleman, Jr.
Attorney for Plaintiff
Dilworth, Paxson, Kalish,
Levy & Coleman
2600 The Fidelity Building
Philadelphia, Pennsylvania
Tel: (215) 546-3000

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS;

Plaintiff,

-against-

73 Civ. 5271 (C.L.B.)

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

PETITION FOR REHEARING AND REARGUMENT

Willy Dreyfus, plaintiff, herewith files this petition for rehearing and reargument of the Memorandum Opinion of this Honorable Court dated May 20, 1974,\* and in support thereof states as follows:

This Court filed a Memorandum Opinion dated May 20,
 1974, which concludes that plaintiff's Complaint failed to
 state a cause of action and thus should be dismissed.

<sup>\*</sup> By Stirulation dated May 29, 1974, and approved by this Court, plaintiff was given until June 10, 1974, to submit the appropriate papers in connection with its Petition for Rehearing and Reargument.

2. Plaintiff's Complaint alleges that defendants in 1938 wrongfully acquired the assets of plaintiff's bank in Germany and that such acquisition, being violative of plaintiff's rights, gave rise to a claim for private civil damages recognizable in courts in the United States. The bases for defendants' liability were alleged to be, inter alia, (a) defendants' actions aided and abetted, and thus were part and parcel of Hitler's illegal scheme to wage war in violation of U.S.-German treaties. These treaties at Nuremburg were interpreted as placing criminal obligations and sanctions on private persons determined to be involved in Hitler's scheme (this Court agrees with plaintiff's interpretation of Nuremburg (Memorandum Opinion, page 10). and such treaties likewise should be interpreted as imposing, expressly or impliedly, private civil liabilities on persons in Lved; (b) even if provisions for private civil liabilities cannot be read into the provisions of the treaties, civil private liabilities still exist for a tort in violation of the law of nations and treaties under the principle that where criminal conduct harms an individual such individual has a right to private damages and this Court has subject matter jurisdiction of this claim under 28 U.S.C. §§1331(a), 1350; (c) in any event defendants' actions were in violation of

treaties and of the law of nations which gives rise to a private cause of action in tort of which this Court has jurisdiction under 28 U.S.C. §1350; (d) the abortive 1948 settlement was carried out under the Four Power Occupation Agreements and had provided for restitution to private parties with the involvement of a United States tribunal set up in Germany and actions of the defendants in connection therewith violated such agreement giving rise to a private cause of action; (e) the foregoing allegations clearly conferred federal jurisdiction, and under the principle of pendent jurisdiction, such claims are cognizable in a U.S. Federal Court even if not violative of the cited treaties, applicable federal common law on private causes of action for violations of federal criminal obligations or applicable principles of the law of nations.

3. On March 11, 1974, defendants filed their motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure requesting that service be vacated and the Complaint be dismissed on solely the following grounds:

- "a. Lack of subject matter jurisdiction;
- b. Lack of personal jurisdiction;
- c. Forum non conveniens;
- d. Insufficient service of process."

No motion was made on the ground of failure to state a cause of action.

- 4. As stated in the Memorandum Opinion, "Of these, No. 4 was waived at the hearing, and Nos. 2 and 3 were with-drawn without prejudice to renew after the completion of discovery in the event that the Court fails to dismiss the complaint on the first numbered ground, i.e., lack of subject matter jurisdiction." (Memorandum Opinion, page 1.)
- 5. Thus the sole issue briefed and argued by the parties on May 1, 1974, was whether this Court lacked federal subject matter jurisdiction on the claims asserted by the plaintiff.
- 6. This Court after briefing and argument held that "there is federal subject matter jurisdiction." (Memorandum Opinion, page 4-5).
- 7. Even though the issues were not argued, briefed or raised by the parties, this Court nevertheless held <u>sua sponte</u> that (a) plaintiff's claims were barred by the act-of-state doctrine, and (b) that no right of recovery existed expressly or by implication, under the treaties and, therefore, that the Complaint failed to state a cause of action and should be dismissed.

In this decision the Court overlooked and misapprehended the following material points:

a. the issue of failure to state a cause of action was not before the Court (see defendants' Notice of Motion to Dismiss, page 1).

In fact, defendants specifically stated that it was not raising the merits or the act-of-state doctrine at this time (see defendants' Memorandum in Support of the Motion to Dismiss the Complaint, page 3; Defendants' Affidavit dated March 11, 1974, page 3; Defendants' Reply Memorandum in Support of the Motion to Dismiss the Complaint, page 2). Thus, it was error for the Court to consider sua sponte an issue which had not been briefed or argued by the parties and which the defendants expressly stated they were not raising at the time of the argument;

b. The issue of whether the Complaint states a claim upon which relief can be granted can best be decided at time of trial after all facts have been adduced and, therefore, under Fed. R. Civ. P. 12(d), this Court should defer decision until that time.

- c. The treaties cited do give rise, expressly or by implication, to a private cause of action;
- d. The Court overlooked the principle that a person can recover damages in tort when harmed by a criminal act, that defendants are alleged to have aided and abetted and profited by conduct which already was found criminal under treaties and the law of nations, and therefore, plaintiff stated a claim in tort for violations of treaties and the law of nations. This Court has federal subject matter jurisdiction over such claims under 28 U.S.C. §1331(a);
- e. This Court completely overlooked plaintiff's claim under 28 U.S.C. §1350 for a tort in violation of treaties and the law of nations, which clearly does not require any right of action under the treaties themselves.
- f. The aborted 1948 agreement was entered into pursuant to the Four Power Occupation Agreement and a court set up by the U. S. Government was involved, and thus to the extent that plaintiff was wrongfully damaged there was a private cause of action based upon

federal law;

g. The facts set forth in the Complaint clearly alleged wrongful conduct giving rise to a private tort action and under the doctrine of pendent jurisdiction such is cognizable in Federal Court;

h. The Court should not have considered the actof-state doctrine as defendants stated that they were
not raising it at this time and it is an affirmative
defense. In any event, this Court erred in its conclusion that, under <u>First National City Bank v. Banco</u>
<u>Nacional de Cuba</u>, 406 U.S. 479 (1972), the act-ofstate doctrine bars plaintiff's claims. As set
forth in the accompanying memorandum, the reasoning
of <u>all nine</u> Justices in <u>First National City Bank</u> renders
the act-of-state doctrine inapplicable to this case, and
five of the nine Justices clearly would hold that
federal courts have the obligation to decide cases
involving wrongs under the Nazi regime, a government
no longer in existence.

For in First National City Bank v. Banco Nacional de Cuba, 406 U.S. 479 (1972), Justices Rehnquist, White, and the Chief Justice clearly approved

Bernstein, and, as this Court recognizes on page 9 of its Memorandum Opinion, Mr. Justice Douglas also accepts Bernstein. This Court erred in construing the Opinion of Mr. Justice Powell as being against plaintiff's position. For Mr. Justice Powell held that it is a justiciable issue which has to be resolved by the Court to determine whether the considerations of the claim would be disruptive of international relations and that he would not be bound either way by a so-called Bernstein letter. He then goes on to conclude that the claim should be considered. Thus, his position favors plaintiff even more than that of the plurality opinion and in no way can be construed as overruling Bernstein. In other words, there are only four Justices who would reject Bernstein and five who would either apply it or, even without the so-called Bernstein letter, would still determine that a Federal Court has jurisdiction to consider a claim that defendants' actions violated the law of nations and the treaties. And, in fact, all nine Justices would hold that a federal court should decide issues involving the effect of the Nazi regime,

- a non-existent government.
- 8. This Court disposed of the issue based upon the original Complaint filed by the plaintiff. If the Court finds that the original Complaint did not state a cause of action, plaintiff must be given leave to file an amended Complaint.
- 9. As stated above, the only issue which defendants submitted to the Court lack of federal matter jurisdiction was decided in plaintiff's favor. The defendants purposely did not brief the issue of the failure to state a cause of action, and in fact, did not raise it and thus plaintiff did not brief the issue or argue it. Therefore, fairness and justice require that plaintiff have an opportunity to breif and argue orally the issue of the failure to state a cause of action before a final judgment dismissing the Complaint is entered against plaintiff.

WHEREFORE, it is prayed as sollows:

- That this Court enter an Order granting rehearing and reargument;
- 2. That the defendants be ordered to file a motion attacking failure to state a cause of action and briefs in support thereof;

3. That plaintiff be given a reasonable time to file an answering brief and that thereafter the matter be set down for oral argument; or, in the alternative

4. That after defendants have filed a brief and plaintiff his reply brief, that this Court have oral argument and therefore enter an order holding that the Complaint does state a cause of action.

Respectfully submitted,

/s/ William T. Coleman, Jr.
William T. Coleman, Jr.
Carl Harzelik
2600 The Fidelity Building
Philadelphia, Pennsylvania 19109

/s/ John R. Horan John N. Horan 299 Park Avenue New York, New York 10017

Dated: June 10, 1974



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against
AUGUST von FINK,
Munich, Germany, and
MERK, FINK & CO.,

:

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S PETITION FOR REHEARING AND REARGUMENT

For the reasons set forth in defendants' Memorandum in opposition to plaintiff's petition for rehearing and reargument, plaintiff's petition should be denied.

New York, New York June 21, 1974

Munich Germany,

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C

By

A Member of the Firm Attorneys for Defendants 330 Madison Avenue New York, New York 10017 (212) 682-2323

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## Endorsement

WILLY DREYFUS, Plaintiff v. AUGUST vonFINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany, Defendants. 73 Civ. 5271-CLB

Motion to reargue is granted. Upon reargument, the memorandum decision of this Court is modified so as to delete therefrom the last paragraph, and add thereto the following provision:

"Plaintiff may, if so advised, serve and file an amended complaint within thirty (30) days following the date of the order herein. Such amended complaint, if any be served, shall allege with particularity the specific provisions of such treaty or treaties relied upon. If such amended pleading is not so served, the Clerk shall enter Judgment thereafter in favor of defendants pursuant to Rule 58, F.R.Civ.P."

So Ordered.

Dated: New York, New York June 26, 1974

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR. U. S. D. J.

## United States Listrict Court

## FOR THE

COUNTERN	DISTRICT	OF	NEW	YORK

WILLY DREYFUS.

(CLB)

Plaintiff

v.

AUGUST von FINCK.
Munich, Germany; and
MERCK, FINCK & CO.,
Munich, Germany,

Defendant S

AMENDED SUMMONS

To the above named Defendant :

You'are hereby summoned and required to serve upon JOHN R. HCRAN

(auri)

plaintiff's attorney , whose address 299 Park Avenue, New York, N. Y. 10017

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an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

BAYKOUD F. FURRELPDE

41/14

Becourg United States Marchall.

G. HARBISON

Deputy Clerk.

Date: July 24, 1974

[Seal of Court]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

73 Civ. 52 1 (C.L.B.)

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

## AMENDED COMPLAINT

- 1. Plaintiff Willy Dreyfus is a citizen of Basel, now residing in Montreux, Switzerland.
- 2. Prior to 1938 and during 1938, plaintiff was a citizen of the German Third Reich, a government no longer in existence, and also a citizen of Switzerland.
- 3. Defendant August von Finck is a resident and citizen of Munich, West Germany.

- 4. Defendant Merck, Finck & Co. is a banking and holding partnership or corporation which is domiciled in Munich, West Germany, has various business dealings and activities in the United States, including New York City within the Southern District of New York, and as such is doing business and is present in the Southern District of New York.
- 5. The original suit was filed and thereafter a garnishment was issued on the Chase-Manhattan Corp., a bank holding corporation and the Chase-Manhattan Bank, N.A., a wholly owned subsidiary thereof, each one of which is domiciled in the State of New York and is doing business in the Southern District of New York.
- 6. Jurisdiction is founded on 28 U.S.C. §1332 and §1350 in that plaintiff is a citizen of Switzerland, defendants, August von Finck and Merck, Finck & Co., are citizens of West Germany, and Chase-Manhattan Corp. and the Chase-Manhattan Bank, N.A., the garnishees, are citizens of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

- 7. Jurisdiction is also founded on 28 U.S.C. §1331 and §1350 in that part of the wrong complained of happened during and as a result of the occupation of West Germany by the United States pursuant to the Four Power Occupation Agreement to which the U.S. was a signatory and also because the defendants' acts complained of herein were violations of various treaties to which the U.S. and Germany were signatories included, inter alia, the Hague Convention, the Versailles Treaty (made applicable to the U.S. by the U.S.-Germany 1921 Treaty of Berlin), the Kellogg-Briand Pact, and the Four Power Occupation Agreement, and also because said defendants' acts complained of violated the law of nations and the universally and generally accepted rules of international law. Jurisdiction is also based upon the doctrine of pendent jurisdiction. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.
- 8. Beginning on or about January, 1932, and thereafter, Adolph Hitler and other political, governmental and business leaders of the German Third Reich conspired and determined to make aggressive war on the rest of the civilized

world and determined to expand illegally, wrongfully, and in violation of treaties, the German borders as they existed as the result of the Versailles Treaty. Part and parcel of and crucial to the successful execution of such scheme, Hitler and the other said leaders adopted the policy of making it impossible for Jews to own economic assets including banking firms in Germany. Such scheme, in addition, included policies which would eliminate the Jewish people from Germany.

- 9. On or about January, 1938, as a result of such scheme and policies, plaintiff was forced to sell and defendants August von Finck and Merck, Finck & Co. were able because of the coercive situation in the German Third Reich to acquire wrongfully and illegally at a completely unfair, illegal, inadequate and inequitable price the banking firm of J. Dreyfus & Co. and all the plaintiff's interests therein.
- 10. Said unfair, illegal, inadequate and inequitable transfer was forced because plaintiff was Jewish and under the Nürnberg Laws and other decrees of Hitler could no longer own or operate a bank in Germany. Moreover, under said Laws and decrees, Jewish persons could not receive fair, adequate and appropriate compensation for such transfers.

The actions of Hitler and other political and business leaders of the German Third Reich which resulted in economic deprivation to Jews, including the actions described in paragraphs 8, 9, and 10 above, were one of the methods used by such leaders to expand illegally and improperly the borders of Germany and as such violated the intent and express and implied provisions of treaties to which the United States and Germany were parties, including the following, inter alia, Articles 1, 46 and 41 of The Hague Treaty of October 18, 1907, as well as the preamble to such treaty, the entire Kellogg-Briand Pact, and inter alia, Articles 124, 227-230, 231, and 300 of the Treaty of Versailles made applicable to the United States by the 1921 U.S.-Germany Treaty of Berlin, and, in addition, violated the law of nations and universally generally accepted rules of international law. At the Nuremberg trials, it was decided that the treaty provisions quoted above, as well as the law of nations and universally and generally accepted rules of international law, were violated when the German Third Reich, Hitler, and other political and economic leaders used the economic means described herein in order wrongfully and illegally to enlarge the German territory and that such treaty

provisions imposed criminal liability and sanctions on those German political, business leaders and other private persons who cooperated in or were part of the carrying out of such scheme and policies.

- 12. Such actions were part of the scheme of Hitler, the German Third Reich, and the political and business leaders thereof to plan for and wage war in violation of, and contrary to the treaties set forth in paragraphs 7 and 11 hereof.
- of the existence of the Nurnberg Laws and the coercive situation with respect to Jews, were able to acquire all of the assets of the banking firm of Dreyfus & Co. and plaintiff's interest therein at a completely illegal, unfair, and advantageous price and since such acquisition was made possible by the unconscionable practice of denying a group of people property rights based upon their race and religion, such acquisition by defendants even when done by private firms was in violation of the law of nations and the universally accepted rules of international law. Such actions are thus a tort by an alien in violation of the law of nations and the generally and universally accepted principles of international law as those terms are set forth in 28 U.S.C. §1350.

- 14. Defendants, August von Finck and Merck, Finck & Co., thus were able wrongfully, unfairly, illegally and inequitably to acquire all rights, title and interest of plaintiff Willy Dreyfus in J. Dreyfus & Co. because of the existence of said Nurnberg Laws and decrees of Hitler which decrees and laws were illegal and contrary to the law of nations, treaties to which the United States and Germany were signatories, and humanity, and were part of the scheme to wage war against humanity and most of the nations of the civilized world.
- 15. As a result of said unfair, illegal and inequitable transfer of plaintiff's economic assets and the said Nurnberg

  Laws and other decrees of Hitler forced the plaintiff and his family to leave Germany shortly after 1938 under threat of death or imprisonment.
- 16. In 1945, after the fighting stopped, plaintiff sought adequate and appropriate compensation from defendants, August von Finck and Merck, Finck & Co., but even though the parties negotiated an agreement in August, 1948, which, though not completely fair and equitable, would have in part compensated

plaintiff, Willy Dreyfus, for the wrong done him, said defendants, August von Finck and Merck, Finck & Co., nevertheless, wrongfully and tortiously refused to honor said agreement and, in fact, renounced it. The Four Power Occupation Agreement had imposed upon persons who wrongfully benefitted from property taken from Jews the obligation to make restitution and defendants by refusing to honor said August, 1948 agreement violated said treaty and committed a tort.

Co., knew that as the result of Hitler's seizure, the improper treatment of Jews, the forced uprooting of plaintiff and his family and the dislocation caused by the war, plaintiff, Willy Dreyfus, was pressed for cash; therefore said defendants.

August von Finck, and Merck, Finck & Co., purposely and tortiously delayed any fair adjustment of plaintiff's rightful claim in order to achieve an unfair, unjust, inadequate, and inequitable adjustment of his claim. Such actions were a tort in violation of the law of nations, the four Power Occupation Agreement and generally and universally accepted principles of international law, as those terms are set forth in 28 U.S.C. §1350.

- 18. Despite the fact that the Allied military authorities occupied Germany, plaintiff's claim was never properly and appropriately adjusted or compensated for.
- 19. Some of the wrongful actions complained of, including the act of taking unconscionable advantage of the economic coercive situation in the German Third Reich with respect to Jews and thus be able to obtain an unfair bargain, are based solely upon tortious actions of the defendants and in no way upon actions of the German Third Reich and such actions independently violated the treaties referred to herein, the federal rule that wrongful conduct in violation of a treaty gives rise to a private cause of action and the law of nations and generally and universally accepted rules of international law, as those terms are used in 28 U.S.C. §1350.
- Dreyfus & Co. by defendants for their valuable banking business was illegal, unfair, inequitable and inadequate in that it was more than \$1,500,000 less than the appropriate amount of compensation which should have been paid for said business.

- 21. Defendants, August von Finck and Merck, Finck & Co., owe plaintiff in excess of \$1,500,000 as compensation and damages for the illegal, unfair, unconscionable acts described in paragraphs 8 through 19 of the Amended Complaint.
- Nurnberg Laws and the other statutes and governmental actions complained of herein, and created the business, political and social atmosphere which permitted defendants to take unconscionable advantage of plaintiff merely because of plaintiff's race and religion, is no longer in existence and in fact the country of Germany as it existed in 1938-1944 is no longer in existence since some of the territory now belongs to other nation-states and the remaining part of Germany is divided into East Germany and West Germany.
- 23. The U.S. Department of State issued Press Release
  No. 296 on April 27, 1949, entitled: "Jurisdiction of United
  States Courts Re Suits for Identifiable Property Involved in
  Nazi Forced Transfers." The substance of this Release follows:

"As a matter of general interest, the Department publishes herewith a copy of a letter of April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for the plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York.

"The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials."

This policy has never been revoked by the U.S. Government and is still in full force and effect.

24. Plaintiff has made demand on defendants, but defendants have refused to pay plaintiff what is justly due him.

WHEREFORE, plaintiff demands:

- (1) Judgment against defendants, August von Finck and/or Merck, Finck & Co., for a sum equal to either
  - (a) the fair and equitable value of what was

wrongfully taken from him in 1938 and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co., in 1938 with interest and costs, or

- (b) the fair and equitable value of what plaintiff was entitled to pursuant to the agreement entered into in 1948 described in paragraph 16 above, with interest and costs; and
- (2) An accounting from defendants, August von Finck and Merck, Finck & Co., of the assets wrongfully taken from plaintiff and J. Dreyfus & Co. in 1938, and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co. in 1938 with gains and dividends achieved therefrom to date;
- (3) Judgment for the amount of damages to plaintiff against any garnishee served in the proceeding to the extent they hold assets of, or owe money to, defendants, August von Finck and/or Merck, Finck & Co.; and
  - (4) Such other relief as in the premises is just and equitable.

/s/ William T. Coleman, Jr.
William T. Coleman, Jr.
Dilworth, Paxson, Kalish, Levy & Coleman
2600 The Fidelity Building
Philadelphia, Pennsylvania 19109

/s/ John R. Horan
John R. Horan
Fox, Glynn & Melamed
299 Park Avenue
New York, New York 10017
-12-

WILLY DREYFUS,

Plaintiff,

: STIPULATION

: 73 Civ. 5271 (C.L.B.)

-against-

AUGUST von FINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties to this action that the attorneys for defendants accept service of the Amended Complaint on the terms and subject to the conditions hereinafter set forth:

- 1. Acceptance of the Amended Complaint shall not in any way constitute an admission that defendants, or either of them, are personally subject to the jurisdiction of this Court and shall not in itself confer in personam jurisdiction on the Court;
- Acceptance of the Amended Complaint shall not in any way constitute a waiver of the right of defendants, or either of them, to move to dismiss the complaint pursuant to 12(b)(2), Federal Rules of Civil Procedures, or to assert lack of jurisdiction over the person as an affirmative defense in their (or either of them) Answer to the Amended Complaint.

Dated: New York, New York July 24, 1974

John R.

Attorney for Plaintiff

299 Park Avenue

New York, N.Y. 10017

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.

330) Madison Avenue

New York, N.Y. 10017

WILLY DREYFUS,

Plaintiff,

NOTICE OF MOTION TO DISMISS

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

73 Civ. 5251 (C.L.B.)

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of William Schurtman, sworn to September 10, 1974, and all prior proceedings had herein, a motion will be made before the Honorable Charles L. Brieant, United States District Judge, in Room 906, United States Courthouse, Foley Square, New York on September 25, 1974 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure vacating service and dismissing the amended complaint on the following grounds:

- Failure to state a claim upon which relief can be granted.
- 2. Lack of subject matter jurisdiction.
- 3. Lack of personal jurisdiction; and
- 4. Forum non conveniens.

and for such other relief as may be proper.

Plaintiff is required to serve defendants' counsel with any papers in opposition to the motion on or before September 20, 1974.

Dated: New York, N. Y. September 11, 1974

Yours, etc.

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.

A Member of the Firm Attorneys for Defendants
330 Madison Avenue
New York, New York
(212) 682-2323

TO: JOHN HORAN, ESQ.
Attorney for Plaintiff
299 Park Avenue
New York, New York 10017

WILLY DREYFUS.

says:

Plaintiff,

AFFIDAVIT

-against-

73 Civ.5271 (C.L.B.)

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

STATE OF NEW YORK ) ss.:

WILLIAM SCHURTMAN, being duly sworn, deposes and

- 1. I am a member of the bar of this Court and of the law firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for defendants.
- 2. I submit this affidavit in support of defendants' motion to dismiss plaintiff's amended complaint for:
  - (a) Failure to state a claim upon which relief can be granted;
  - (b) Lack of subject matter jurisdiction;
  - (c) Lack of personal jurisdiction;
  - (d) Forum non conveniens.
- 3. I make this affidavit in my capacity as an attorney because all facts that are relevant to the motion are pleaded in plaintiff's amended complaint, are matters of record in the Court or are set forth in exhibits submitted to the Court.

## OF THIS COURT

- 4. On May 20, 1974 this Court dismissed plaintiff's original complaint for failure to state a claim upon which relief can be granted. A copy of the Court's May 20, 1974 memorandum decision is annexed as Exhibit "A".
- 5. On May 29, 1974 plaintiff moved for reargument, requesting, inter alia, the right to amend his complaint to set forth the particular treaty provisions which he claims create a private right of action for damages. On June 26, 1974 this Court granted the motion to the extent of modifying its memorandum decision of May 20, 1974 to permit plaintiff to serve and file an amended complaint which "shall allege with particularity the specific provisions of such treaty or treaties relied upon." A copy of the Court's June 26, 1974 order is annexed as Exhibit "B".

## THE AMENDED COMPLAINT

6. On July 24, 1974 defendant's attorneys accepted service of an amended complaint pursuant to a stipulation wherein plaintiff acknowledged and agreed that defendants did not thereby subject themselves to the personal jurisdiction of this Court. Attached to this affidavit as Exhibit "C" is a "redlined" copy of the amended complaint, marked to indicate where the amended complaint differs from the dismissed complaint.

# SHOULD BE DISMISSED

- 7. I respectfully submit that the amended complaint should be dismissed because:
  - (a) Plaintiff still has failed to state

    a claim upon which relief can be granted;
  - (b) this Court lacks jurisdiction over the subject matter (I recognize that this Court has previously held that it has jurisdiction over the subject matter but I respectfully raise the issue again with a request for reconsideration and to preserve it for the record);
  - (c) this Court lacks personal jurisdiction over the defendants; \*
  - (d) on the ground of forum non conveniens.\*
- 8. In the interest of saving time, I respectfully request that defendants' affidavits and briefs in support of their original motion to dismiss and in opposition to plaintiff's motion for reargument be incorporated by reference in defendants' present motion to dismiss the amended complaint.
- 9. For the Court's convenience, I submit herewith a separate, indexed Appendix containing copies of the earlier papers and exhibits.

<sup>\*</sup>As in our earlier motion to dismiss, I request that the issues of personal jurisdiction and forum non conveniens be deferred until this Court has decided the other issues.

THE AMENDED COMPLAINT PAILS TO ALLEGE WITH PARTICULARITY SPECIFIC TREATY PROVISIONS UNDER WHICH PLAINTIFF STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED 10. In paragraph "11" of the amended complaint, plaintiff purports to base his action on the Preamble and Articles 1, 41 and 46 of the Hague Treaty of October 18, 1907. the Kellog-Briand Pact, and Articles 124, 227-230, 231 and 300 of the Treaty of Versailles. In accition, in paragraphs "16" and "17" of the amended complaint, plaintiff invokes the "Four Power Occupation Agreement" in support of his complaint. 11. As we show in our accompanying memorandum of law, even a cursory examination of these treaties reveals that be protected against a government's improper acts were

they have no relationship to plaintiff's purported injuries and do not create private rights of action. The cited treaty provisions imposed obligations and restrictions on nations, not individual citizens. Moreover, the persons sought to foreigners, not the nation's own citizens. Consequently, plaintiff still has not stated a claim upon which relief can be granted or pleaded a case over which this Court has subject matter jurisdiction.

WHEREFORE, defendants respectfully request that plaintiff's amended complaint be dismissed with prejudice and without further leave to amend.

William Schurtman

Sworn to before me this 10th day of September, 1974.

> Notary Public, State of New York No. 31-7155465 Qualified in New York County Commission Expires March 30, 19,

FOR THE SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSE

WILLY DREYFUS,

Plaintiff, : 73 Civ. 5271 (C.L.B.)

-against-

NOTICE OF MOTION

AUGUST von FINCK, Munich, Germany and : MERCY, FINCK & CO., Munich, Germany,

Detendants.

MAY 30 1974

SIRS:

PLEASE TAKE NOTICE that upon the memorandum of law to be submitted herewith, the undersigned attorneys for the plaintiff ' ... will move this court at a Motion Part in Room 1505, of the United States Courthouse, Foley Square, New York, N. Y., on June 21, 1974, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 9(m) of the General Rules of this court for re-argument of this court's memorandum decision filed May 20, 1974, upon the ground that the court overlooked cortain controlling law and decisions, more specifically set forth in the memorandum of law submitted herewith, and for such order and further relief as this court deems just.

Dated: New York, N. Y. May 29, 1974

TO: WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C. Attorneys for Defendants 330 Madison Avenue New York, N. Y. 10017 Tel: (212) 682-2323

YOURS, ETC.

John R. Horan Attorney for Plaintiff 299 Park Avenue New York, N. Y. 10017 Tel: (212) 593-6600

William T. Coleman, Jr. Attorney for Plaintiff Dilworth, Paxson, Kalish, Levy & Coleman 2600 The Fidelity Building Philadelphia, Pennsylvania Tel: (215) 546-3000

#### Endorsement

WILLY DREYFUS, Plaintiff v. AUGUST vonFINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany, Defendants. 73 Civ. 5271-CLB

Motion to reargue is granted. Upon reargument, the memorandum decision of this Court is modified so as to delete therefrom the last paragraph, and add thereto the following provision:

> "Plaintiff may, if so advised, serve and file an amended complaint within thirty (30) days following the date of the order herein. Such amended complaint, if any be served, shall allege with particularity the specific provisions of such treaty or treaties relied upon. If such amended pleading is not so served, the Clerk shall enter Judgment thereafter in favor of defendants pursuant to Rule 58, F.R.Civ.P."

So Ordered.

New York, New York Dated: June 26, 1974

Charles L. Brieant

U. S. D. J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

73 Civ. 5271 (C.L.B.)

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

#### AMENDED COMPLAINT

- Plaintiff Willy Dreyfus is a citizen of Basel. now residing in Montreux, Switzerland.
- 2. Prior to 1938 and during 1938, plaintiff was a citizen of the German Third Reich, a government no longer in existence, and also a citizen of Switzerland.
- 3. Defendant August von Finck is a resident and citizen of Munich, West Germany.

Key: Deletions indicated by [] Additions underlined

- 4. Defendant Merck, Finck & Co. is a banking and holding partnership or corporation which is domiciled in for Berlin. [and] Munich, West Germany, has various business dealings and activities in the United States, including New York City within the Southern District of New York, and as such is doing business and is present in the Southern District of New York.
- 5. The original suit was filed and thereafter a garnishment was issued on the Chase-Manhattan Corp., a bank holding corporation and the Chase-Manhattan Bank, N.A., a wholly owned subsidiary thereof, each one of which is domiciled in the State of New York and is doing business in the Southern District of New York.
  - 6. Jurisdiction is founded on 28 U.S.C. §1332 and §1350 in that plaintiff is a citizen of Switzerland, defendants, August von Finck and Merck, Finck & Co., are citizens of West Germany, and Chase-Manhattan Corp. and the Chase-Manhattan Bank, N.A., the garnishees, are citizens of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

Jurisdiction is also founded on 28 U.S.C. §1331 and §1350 in that part of the wrong complained of happened during and as a result of the occupation of West Germany by the United States pursuant to the Four Power\_Occupation Agreement Tthey are acts which constituted to which the U.S. was a signatory and also because the defendants acts complained of herein were violations of various treaties United States [including] to which the U.S. and Germany were signatories included, inter [including] alia, the Hague Convention, the Versailles Treaty (made applicable Land to the U.S. by the U.S.-Germany 1921 Treaty of Berlin), the Kellogg-Briand Pact, and the Four Power Occupation Agreement, and also because said defendants' acts complained of violated the law of nations and the universally and generally accepted rules of international law. Jurisdiction is also based upon the doctrine of pendent jurisdiction. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

EPlaintiff, Willy Dreyfus, in 1938 and prior thereto, Beginning on or about January, 1932, and there-was a principal owner and manager of J. Dreyfus & Co., a private after, Adolph Hitler and other political, governmental and banking firm founded by his family in 1868. Said firm had its principal business leaders of the German Third Reich conspired and place of business in Berlin, Germany.) determined to make aggressive war on the rest of the civilized

world and determined to expand illegally, wrongfully, and in violation of treaties, the German borders as they existed as the result of the Versailles Treaty. Part and parcel of and crucial to the successful execution of such scheme, Hitler and the other said leaders adopted the policy of making it impossible for Jews to own economic assets including banking firms in Germany. Such scheme, in addition, included policies which would eliminate the Jewish people from Germany.

[Said plaintiff] [Collective Nazi perfi

9. On or about January, 1938,/as a result of/such

[against his will, intent and desire to transfer]

scheme and policies, plaintiff was forced to sell and defendants

August von Finck and Merck, Finck & Co. were able because of

the coercive situation in the German Third Reich to acquire

wrongfully and illegally at a completely unfair, illegal, inadequate

and inequitable price the banking firm of J. Dreyfus & Co. and

Tof] all the plaintiff's interests therein. Ito defendants, August von Finck a Merck, Finck & Co.]

transfer was forced because plaintiff was Jewish and under the Nürnberg Laws and other decrees of Hitler could no longer own or operate a bank in Germany. Moreover, under said Laws and decrees, Jewish persons could not receive fair, adequate and appropriate compensation for such transfers.

The actions of Hitler and other political and business leaders of the German Third Reich which resulted in economic deprivation to Jews, including the actions described in paragraphs 8, 9, and 10 above, were one of the methods used by such leaders to expand illegally and improperly the borders of Germany and as such violated the intent and express and implied provisions of treaties to which the United States and Germany were parties, including the following, inter alia, Articles 1, 46 and 41 of The Hague Treaty of October 18, 1907, as well as the preamble to such treaty, the entire Kellogg-Briand Pact, and inter alia, Articles 124, 227-230, 231, and .300 of the Treaty of Versailles made applicable to the United States by the 1921 U.S.-Germany Treaty of Berlin, and, in addition, violated the law of nations and universally generally accepted rules of international law. At the Nuremberg trials, it was decided that the treaty provisions quoted above, as well as the law of nations and universally and generally accepted rules of international law, were violated when the German Third Reich, Hitler, and other political and economic leaders used the economic means described herein in order wrongfully and illegally to enlarge the German territory and that such treaty

provisions imposed criminal liability and sanctions on those

German political, business leaders and other private persons

who cooperated in or were part of the carrying out of such

'scheme and policies.

- 12. Such actions were part of the scheme of Hitler,

  the German Third Reich, and the political and business leaders

  thereof to plan for and wage war in violation of, and contrary

  5 of the complaint.

  to the treaties set forth in paragraphs 7 and 11 hereof.
- of the existence of the Nurnberg Laws and the coercive situation with respect to Jews, were able to acquire all of the assets of the banking firm of Dreyfus & Co. and plaintiff's interest therein at a completely illegal, unfair, and advantageous price and since such acquisition was made possible by the unconscionable practice of denying a group of people property rights based upon their race and religion, such acquisition by defendants even when done by private firms was in violation of the law of nations and the universally accepted rules of international law.

  Such actions are thus a tort by an alien in violation of the law of principles of international law as those terms are set forth in 28 U.S.C. \$1350.

las stated in paragraph 7 above.

14. Defendants, August von Finck and Merck, Finck

& Co., thus were able wrongfully, unfairly, illegally and

[acquired]
inequitably/to acquire all rights, title and interest of

plaintiff Willy Dreyfus in J. Dreyfus & Co. because of the

existence of said Nurnberg Laws and decrees of Hitler which

decrees and laws were illegal and contrary to the law of

nations, treaties to which the United States and Germany were

signatories, and humanity, and were part of the scheme to wage

war against humanity and most of the nations of the civilized

world.

transfer of plaintiff's economic assets and the said Nurnberg

Laws and other decrees of Hitler forced the plaintiff and his

family to leave Germany shortly after 1938 under threat of death

or imprisonment.

When World War II ended 16. In 1945, after the fighting stopped, plaintiff sought adequate and appropriate compensation from defendants.

August von Finck and Merck, Finck & Co., but even though the parties negotiated an agreement in August, 1948, which, though not completely fair and equitable, would have in part compensated

plaintiff, Willy Dreyfus, for the wrong done him, said defendants, August von Finck and Merck, Finck & Co., nevertheless, wrongfully and tortiously refused to honor said agreement and, in fact, renounced it. The Four Power Occupation Agreement had imposed upon persons who wrongfully benefitted from property taken from Jews the obligation to make restitution and defendants by refusing to honor said August, 1948 agreement violated said treaty and committed a tort.

Co., knew that as the result of Hitler's seizure, the improper treatment of Jews, the forced uprooting of plaintiff and his family and the dislocation caused by the war, plaintiff, Willy Dreyfus, was pressed for cash; therefore said defendants,

August von Finck, and Merck, Finck & Co., purposely and tortiously delayed any fair adjustment of plaintiff's rightful claim in order to achieve an unfair, unjust, inadequate, and inequitable adjustment of his claim. Such actions were a tort in violation of the law of nations, the Four Power Occupation Agreement and generally and universally accepted principles of international law, as those terms are set forth in 28 U.S.C. §1350.

- 18. Despite the fact that the Allied military authorities occupied Germany, plaintiff's claim was never properly and appropriately adjusted or compensated for.
- 19. Some of the wrongful actions complained of, including the act of taking unconscionable advantage of the economic coercive situation in the German Third Reich with respect to Jews and thus be able to obtain an unfair bargain, are based solely upon tortious actions of the defendants and in no way upon actions of the German Third Reich and such actions independently violated the treaties referred to herein, the federal rule that wrongful conduct in violation of a treaty gives rise to a private cause of action and the law of nations and generally and universally accepted rules of international law, as those terms are used in 28 U.S.C. §1350.
- 20. The total compensation paid plaintiff and J.

  Dreyfus & Co. by defendants for their valuable banking business was illegal, unfair, inequitable and inadequate in that it was more than \$1,500,000 less than the appropriate amount of compensation which should have been paid for said business.

- 21. Defendants, August von Finck and Merck, Finck & Co., owe plaintiff in excess of \$1,500,000 as compensation and damages for the illegal, unfair, unconscionable acts described in paragraphs, 8 through 19 of the Amended Complaint.
- Pefendants August von Finck and Merck Finck & Co., The German third Reich which promulgated the have profited greatly from the wrongful actions described herein and Nurnberg Laws and the other statutes and governmental actions now own assets and have an annual income which in part grew out of complained of herein, and created the business, political and the assets of plaintiff and his private banking firm which were social atmosphere which permitted defendants to take unconscionable wrongfully acquired by defendants. August von Finck and Merck, Finck advantage of plaintiff merely because of plaintiff's race and & Co., as a result of the perfidious Nurnberg Laws and other decrees religion, is no longer in existence and in fact the country of of Hitler directed against Jews in Germany. I Germany as it existed in 1938-1944 is no longer in existence since some of the territory now belongs to other nation-states and the remaining part of Germany is divided into East Germany and West Germany.
- No. 296 on April 27, 1949, entitled: "Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers." The substance of this Release follows:

"As a matter of general interest, the Department publishes herewith a copy of a letter of April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for the plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York.

"The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials."

This policy has never been revoked by the U.S. Government

and is still in full force and effect.

[Willy Dreyfus] [upon] [August von Finck and Merc Plaintiff Alas made demand on fendants, but Finck & Co [compensate] [adequately] [said]

/ defendants have refused to pay plaintiff what is justly due him.

## WHEREFORE, plaintiff demands:

Judgment against defendants, August von Finck and/or Merck, Finck & Co., for a sum equal to either (a) the fair and equitable value of what was

wrongfully taken from him in 1938 and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co., in

1938 with interest and costs, or

(b) the fair and equitable value of what plain

- (b) the fair and equitable value of what plaintiff was entitled to pursuant to the agreement entered into in 1948 described in paragraph 16 above, with interest and costs; and
- and Merck, Finck & Co., of the assets wrongfully taken from plaintiff and J. Dreyfus & Co. in 1938, and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co. in 1938 with gains and dividends achieved therefrom to date;
- (3) Judgment for the amount of damages to plaintiff against any garnishee served in the proceeding to the extent they hold assets of, or owe money to, defendants, August von Finck and/or Merck, Finck & Co.; and
- (4) Such other relief as in the premises is just and equitable.

/s/ William T. Coleman, Jr.
William T. Coleman, Jr.
Dilworth, Paxson, Kalish, Levy & Coleman
2600 The Fidelity Building
Philadelphia, Pennsylvania 19109

John R. Horan

John R. Horan

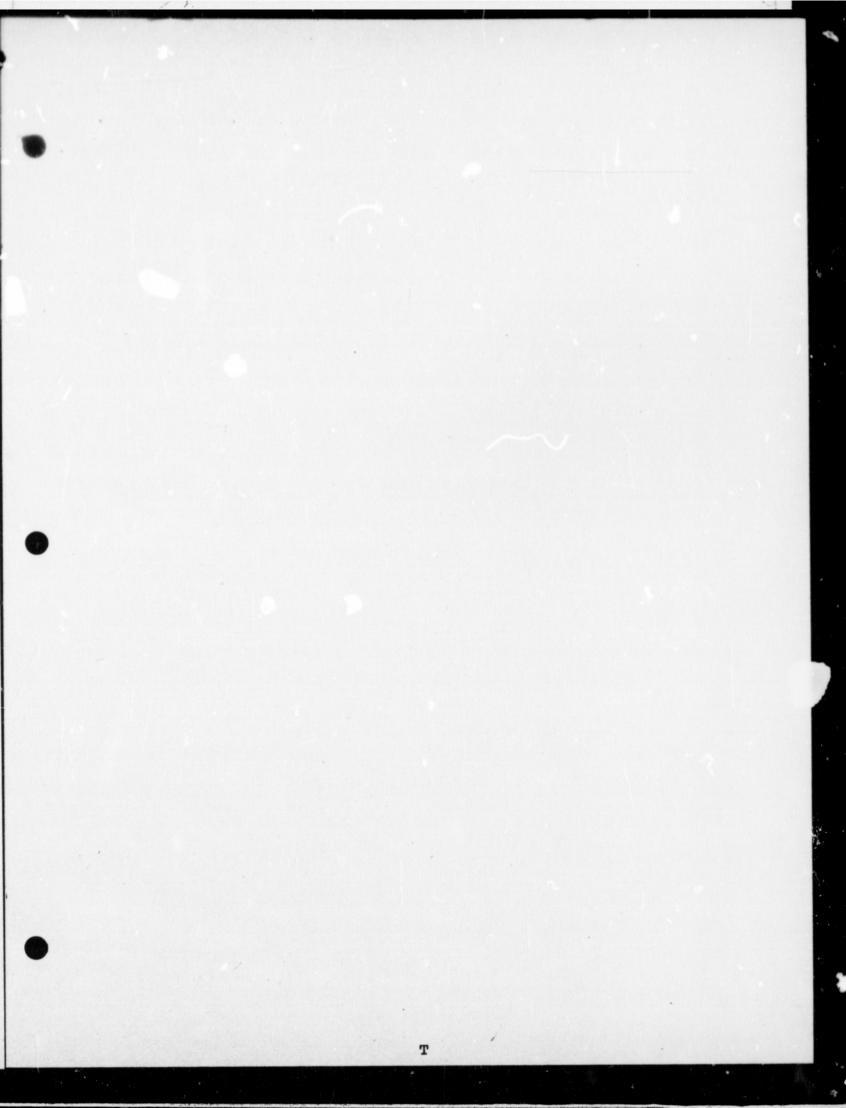
Fox, Glynn & Melamed

299 Park Avenue

New York, New York 10017

-12-

In the original Affidavit supporting the Notice of Motion to Dismiss, a copy of Judge Brieant's memorandum of May 20, 1974 was attached as an exhibit. It is deleted in this record as an at achment to the Notice of Motion since it appears independently as Appendix L.



COPY

COPY

AND SEC

UNITED STATES DISTRICT COURT FOUTHERS DISTRICT OF NEW YORK

WILLY DREYFUS,

73 Civ. 5271-CLB

Plaintiff,

-against-

MEMORANDUM

AUGUST von FINCK, Munich, Germany and MERCK, FINCK & CO., Munich, Germany,

Defendants.

# 41675

Bricant, J.

By memorandum opinion dated May 20, 1974, the complaint in this action was dismissed, pursuant to Rule 12(b), F.R.Civ.P., for failure to state a claim upon which relief could be granted. Briefly, we held that although this Court had subject matter jurisdiction, and in rem jurisdiction over funds of the defendant which had been attached, the complaint failed to state a claim, first because the Act of State doctrine precluded the Court from inquiring into the alleged forced transfer in Nazi Germany in 1936 of plaintiff's property to defendant, and second, because no private cight of action exists under the treaties upon which plaintiff relied, nor could the Court imply such a right of action.

Plaintiff moved for reargument pursuant to Rule 9(m) of the General Rules of this Court, and by memorandum endorsement dated June 26, 1974, the motion was granted. The May 20, 1974 decision was modified on reargument to allow plaintiff to file an amended complaint alleging with particularity the provisions of the treaties upon which plaintiff relies. An amended complaint was filed on July 24, 1974. By notice of motion filed September 11, 1974, defendants moved to dismiss the amended complaint, for failure to state claim, and upon additional grounds which, by agreement of counsel are to be deferred pending resolution of the Rule 12(b)(6) motion.

I

ramiliarity with our prior opinion is assumed. The original complaint alleged, as does the amended pleading, that in 1938 plaintiff, then residing in Germany, was forced, because he was Jewish, to transfer his banking business to defendants for an inadequate consideration, and that this action was part of Hitler's scheme to wage war in violation of the Hague Convention, the Versailles Treaty, the Kellogg-Briand Pact, and the law of nations.

which compensation was to be paid to plaintiff. Plaintiff alleges (Amended Complaint, ¶¶16 and 17) that defendants tortiously breached and renounced that agreement, and that the tortious and wrongful renunciation of the 1948 settlement agreement violated the Four Power Occupation Agreement in some manner not specified.

The so-called Four Power Occupation Agreement ("Agreement on Central Machinery in Germany"), 5 U.S.T. 2062, however, is a mere allocation of "housekeeping" duties within military zones providing for the administration of sectors of Germany by the four victorious powers. There is no mention therein of injuries to private parties, nor of remedies for such injuries, nor does the Agreement itself provide for reparations, restitutions or tribunals to accomplish reparations. There is, therefore, no cause of action for the benefit of private parties expressed in that Agreement, nor is there any provision upon which to predicate an implied right of action in this Court.

The amended complaint charges that "[b]eginning on or about January, 1932, and thereafter, Adolph Hitler and other

political, governmental and business leaders of the German Third Reich conspired and determined to make aggressive war" (Amended Complaint, ¶8) in violation of the treaties set forth in both the original complaint and the amended complaint, and in violation of international law, and that as

"part and parcel of and crucial to the successful execution of such scheme, Hitler and the other said leaders adopted the policy of making it impossible for Jews to own economic assets including banking firms in Germany. Such scheme, in addition, included policies which would eliminate the Jewish people from Germany." (Amended Complaint, ¶8)

Plaintiff does not accuse the individual defendant, nor anyone associated with the corporate defendant of having been among those business leaders who conspired directly with Hitler or his cohorts. Upon the assertion that the "conduct complained of herein was held at Nurnberg to constitute criminal violations of the treaties relied on herein and the law of nations," (Plaintiff's Memorandum Contra Defendants' Motion to Dismiss Amended Complaint, p.33), plaintiff constructs the argument that these criminal violations give rise to an implied private right of action in this Court, citing cases arising under the fetal securities laws and similar statutes.

The vicious crimes of Mitler, and the iniquitous treatment by his regime of Jews are well-documented matters of history, properly condemned at Nurnberg, but unless the defendants in this case are responsible for the crimes of that infamous regime, plaintiff's argument must fail. Although plaintiff relates the forced sale of his business to the entire Nazi war effort and its religious persecutions, the core of his injury is the forced sale itself, and the Nurrberg Tribunal held this particular kind of injury was not a war crime.

Executive Order No. 9679, January lo, 1946, President Truman conferred on the Representative of the United States and its Chief of Counsel, "authority to proceed ... in proper cases, against other Axis adherents." Whiteman, Vol. 11 Digest of International Law (1968), p.911. Twelve such trials were held during the years 1946 through 1948. Three and part of a fourth

trial were concerned with the criminal responsibility of leading German private businessmen. With regard to <u>United States</u>
v. <u>Friedrich Flick</u>, Case No. 5, <u>op</u>. <u>cit</u>. p.912, it was reported that:

"The prosecution's effort ... to convict three of the defendants of crimes against humanity committed before the war, was totally unsuccessful. The court refused to take jurisdiction, on the ground that crimes committed before and wholly unconnected with the war were not encompassed by Law No. 10. It added, furthermore, that crimes against humanity are 'only such as affect the life and liberty of the oppressed peoples, ' and that 'compulsory taking of industrial property, however reprehensible, is not in that category.' Consequently, had it assumed jurisdiction of the charge, the Tribunal would have been unwilling to decide 'that a person becomes guilty of a crime against humanity merely by asserting antisemitic pressure to procure by purchase or through state expropriation industrial property owned by Jews. "

Even applying to treaties, for purposes of argument, the rule that violations of a criminal statute may give rise to a private cause of action in a proper case, no such cause exists here in view of the aforementioned determination of the Nurnberg Tribunal.

In accordance with this Court's prior direction,
plaintiff alleged in his amended complaint specific sections
of treaties he claims defendants violated. These include the
preamble to The Hague Treaty of October 18, 1907, and Articles
1, 46 and 41 thereof; the entire Kellogg-Briand Pact; and

Articles 124, 227-230, 231, and 300 of the Treaty of Versailles "made applicable to the United States by the 1921 U. S.-Germany Treaty of Berlin;" and "the law of nations and universally generally accepted rules of international law." (Amended Complaint, §11).

The preamble to The Hague Convention of the Laws and Customs of War on Land (36 Stat. 2277) states that the Convention is "intended to serve as a general rule of conduct for the belligerents ... in their relations with inhabitants" of countries with which they are at war. Articles 1, 41 and 46 read as follows:

"Article 1. The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention."

"Article 41. A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders, or, if necessary, compensation for the losses sustained."

"Article 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated."

Article 40, not cited by the plaintiff, sheds some light on the use and meaning of the word "party" in Article 41, which is equivalent to the word "state." Article 40 provides that a violation of the Convention by one party "gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately." Thus, it is states, not individuals, who may demand punishment or compensation under Article 41. This is in accordance with the general principle that only states have rights under international law. "[U]nder established international diplomatic and legal procedures persons have generally not had standing to initiate their own claims." Restatement (Second) of Foreign Relations, p.526 (1965). This statement is made with regard to the rights of aliens, with which it is apparent the Hague Convention is concerned. The Hague Convention does not presume to regulate the rights of nationals against their own governments, but is an attempt to protect the rights of foreign inhabitants of invaded countries.

The Kellogg-Briand Pact (46 Stat. 2343) has two sections which bear on the case. Article 1 declares that the

contracting parties "condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another," and Article 2 states that settlement of disputes shall be by "pacific means." Obviously, a treaty stated in such broad and precatory terms is at most a compact among nations, not purporting to confer any rights upon individuals.

plaintiff (to which the United States was not a signatory) provide that Germany is to pay reparations to French nationals (Article 124), that the alties may prosecute German citizens for war crimes with the cooperation of the German government (Articles 227-230), that Germany accepts responsibility for damage to Allied countries and their nationals (Article 231), and that Allied nationals who were damaged by acts done in Germany may file complaints in an arbitral tribunal (Article 300). None of these articles purports to intervene on behalf of German nationals who have claims against their own government.

We, therefore, adhere to our original decision that "There is no substantive right to recover for the claimed tort expressed in plaintiff's

favor in any treaty provision to which the United States is a party." (Memorandum Decision, May 20, 1974, p.15)

not imply a private right of action by analogy to cases arising under the federal securities laws or similar internal regulatory (1350) statutes of the United States. As we pointed out in our May 20, 1974 decision, private rights of action must be created by express treaty ran uage, as was done in the Warsaw Convention.

See Restatement (Second) of Foreign Relations, \$1, Comment f and \$115, Comment e (1965); Pauling v. McElrey, 164 F. Supp. 390

D.D.C. 1958, aff'd, 278 F.2d 252, cert. denied, 364 U. S. 835; Filhiol v. Maurice, 185 U.S. 108 (1902); Z. & F. Assets Realization Corp. v. Pull, 114 F.2d 464 (D.C. Cir. 1940), aff'd, 311

U.S. 479 (1941). Accordingly, the amended complaint also fails to state a tort claim under 28 U.S.C. \$1350, or otherwise, upon which relief can be granted, and there is no pendent jurisdiction over the contract claim.

plaint was dismissed was that the Act of State doctrine prevents this Court from inquiring into official acts of the German government done within its own territory. Plaintiff's counsel has made a scholarly organism in support of the position that the doctrine is not applicable here, either because the so-called "Bernstein exception" applies, or because this case does not meet the criteria set by the Supreme Court in two recent cases in which it discussed the doctrine (Banco Nacional de Cuba v. fabbatino, 376 U.S. 398 (1964) and First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759 [1972]), mentioned in this Court's May 20, 1974 opinion. We previously noted that plaintiff's tort claim

"is analogous factually and legally to the claim pleaded in Bernstein v. Van Heyghen Freres, S.A., 163 F.2d 246 (2d Cir. 1947), cert. denied 332 U.S. 772, and also in Bernstein v. N.V. Nederlandsche-Amerikaansche, etc., 210 F.2d 375. As we are informed by Judge Learned Hand (Van Heyghen, supra, p. 248-9) acts of the sort complained of on the part of defendants here were, at the time they are alleged to have taken place, and prior to December 1938 'unlawful under the laws of the Reich itself,' the place of the tort." (p.7)

The Bornstein litigation did not seek to found subject matter

diversity of citizenship under 28 U.S.C. \$1332(a)(2). E registration v. N.V. Nederlandsch-Amerikaansche, etc., 6 F.R.D. 297, 301(S.D.N.Y. 1946)

The Supreme Court held in <u>Sabbatino</u> that the Act of State doctrine was a principle of "federal-court-built law" (376 U.S. p.426), a "principle of decision binding on federal and state courts alike but compelled neither by international law nor by the Constitution," although it has "Constitutional underpinnings." (376 U.S. at p.427).

Expropriation of property of nationals of the expropriator, without compensation, is not universally regarded as a violation of international law, especially not by communist and third-world nations, and therefore is an issue too unsettled and sensitive to be passed upon by the federal courts. The Court held that it was applying the Act of State doctrine to the case before it, based upon considerations applicable to the particular case only, rather than fashioning a rule of general applicability precluding examination by the federal courts of every kind of act of state. The "relevant considerations" on which it based its holding were:

- the property confiscated was located within the territory of the foreign sovereign;
- the forcign sovereign was extant and recognized
   this country at the time of the Court's decision;
- as to controlling legal principles, even though it was alleged that the taking violated international law (376 U.S. at p.428).

The Court indicated that it might not apply the Act of State doctrine where international law was clear, or where the implications of a decision on the merits were less important to United States foreign relations. The Court also stated (p.428):

"The balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence, as in the <u>Bernstein</u> case, for the political interest of this country may, as a result, be measurably altered."

The majority in <u>Sabbatino</u> carefully expressed no opinion on the "Bernatein exception" because the Department of State had not communicated to the Court its position on the applicability of the Act of State doctrine to the Cuban expropriations. The Court stated that it did not intend to set forth

an inflexible rule requiring application of the doctrine.

Pather, because the Act of State doctrine is a principle of federal law subject to re-examination depending upon the circumstances of each case, the Court could and might now decide the Bernstein case differently from the Second Circuit decision Parastein v. N.V. Nederlandsche-Amerikaansche, etc., 210 F.2d 375 (2d Cir. 1954). See also, Pernstein v. Van Heyghen Preres, S.A., 163 P.2d 246 (2d Cir. 1947), cert. denied 332 U.S. 772.

a decision by the federal courts that a taking by a foreign country was invalid and contrary to international law would be an affront to the emproprieting country and might projudice efforts by the Fracutive Branch to achieve redress through diplomatic means. The reasons underlying the doctrine, as stated by Mr. Justice White in dissent in Sabbatino are

"an effort to maintain a certain stability and predictability in transnational transactions, to avoid friction between nations, to encourage settlement of these disputes through diplomatic means and to avoid interference with the executive control of foreign relations." 376 U.S. at p.447.

With these objectives Mr. Justice White had no dispute, although

he disagreed with the method chosen by the majority to implement those objectives. Mr. Justice White pointed out that these considerations do not apply in a Nazi confiscation case. Confiscations by the Nazis such as those involved in Bernstein

"had been condemned in multinational agreements and declarations as crimes against humanity. The acts could thus be measured in local courts against widely held principle rather than judged by the parochial views of the iorum." 376 U.S. p.457, fn.18

One of the main reasons the Court gave for its hesitation to inquire into the Cuban confiscations was the lack of international agreement as to the legality of the taking without adequate compensation, which, as Mr. Justice White pointed out, does not exist in a "Bernstein" case.

In Banco Nacional de Cuba v. First National City Bank,
431 F.2d 394 (2d Cir. 1970) the Court of Appeals applied the
Act of State doctrine to bar a counterclaim for moneys First
National held in excess of the proceeds realized from its sale
of collateral securing a loan made to the Cuban bank. First
National claimed the excess should be applied as a set-off in
payment for First National branches expropriated by the Castro

government. The Second Circuit held the Act of State doctrine procluded assertion by First National of its counterclaim.

When the case reached the Supreme Court for the first time, the Department of State wrote a "Bernstein letter" to that Court, empressing its view that "the foreign policy interests of the United States do not require the application of the Act of State doctrine to bar adjudication of the validity of defendant's counterclaim or set-off against the Government of Cuba in these circumstances." (Quoted at 442 F.2d p.532).

The Supreme Court vacated the judgment of the Second Circuit and remanded for reconsideration in view of the State Department's letter. On remand, the Second Circuit adhered to its view, stating that:

"First National City's arguments are based wholly on the assumption that the so-called Bernstein exception to the Act of State doctrine applies here since the State Department has written a letter. We feel that that assumption is erroneous. Bernstein arose out of a unique set of circumstances calling for special treatment, and hence should be narrowly construed and, insofar as is possible, limited to its facts." 442 F.2d p.534.

Among the "unique circumstances" cited by the Second Circuit was the fact that the United States had gone to war with Next Germany, that government was no longer in existence, and the kind of acts of which Bernstein complained had been condemned throughout the world as crimes against humanity. The Second Circuit also quoted from the Solicitor General's assigns curies brief in the Sabbatino case:

"The circumstances leading to the State Department's letter in the Pernstein case were, of course, most unusual. The governmental acts there were part of a monstrous program of crimes against humanity; the acts had been condemned by an international tribunal after a cataclysmic world war which was caused, at least in part, by acts such as those involved in the litigation, and the German State no longer existed at the time of the State Department's letter. Moreover, the principle of payment of reportations by the successor German governm nt had already been imposed ... so that there was no chance that a suspension of the act of state doctrine would affect the negotiation of a reparations settlement." 442 F.2d p.534.

When <u>First National City</u> again was before the Supreme Court, the <u>Cocond Circuit</u> was reversed and the case remanded.

Three justices framed the issue as follows (406 U.S. p.764):

"The question that we must now decide is whether the so-called Fernstein exception to the act of state doctrine should be recognized in the context of the facts before the Court." the phrases "Bernstein exception" and "Bernstein letter" are being used in a generic sense. The Court uses the term "Bernstein letter" to mean any letter written by the Department of State in any case, purporting to relieve the federal courts of the restraint upon the exercise of their jurisdiction which would result from application of the Act of State destrine. The Court uses the term "Bernstein exception" to mean an exception to the general applicability of the destrine in an expropriation case which results from the issuance in any such case of a "Bernstein letter."

When Justices Reboquist, White and the Chief Justice state that:

"wa...adopt and approve the so-called Bernstein exception to the Act of State doctrine," 406 U.S. p. 763

they are merely stating their view of the law, that

"where the Executive Branch, charged as it is with primary responsibility for the conduct of foreign affairs, expressly represents to the Court that application of the Act of State doctrine would not advance the interests of American foreign policy, that doctrine should not be applied. by the courts." 406 U.S. p. 768

Likewise, when Justices Brennan, Stewart, Marshall and Blackmun, in dissent, state:

"The Court today revers as the judgment of the Court of Appeals for the Second Circuit which declined to engrate the 'Bernstein' exception upon the act of state doctrine.... The Court, nevertheless, affirms the Court of Appeals' rejection of the 'Bernstein' exception. Four of us in this opinion unequivocally take that step, as do Mr. Justice Douglas and Mr. Justice powell in their separate opinions concurring in the result of the judgment," 406 U.S. p. 776-777

exception in a generic sense. In essence, the four dissenters would re-affirm the Sabbatino case. In footnote 1 to the dissent (406 U.S. p. 776), the dissenters note that the hernstein exception has been an exceedingly narrow one and was successfully applied only in the original hernstein case.

There is no indication in the dissenting opinion that the dissenters would refuse to apply the Hernstein exception if they were reviewing the Bernstein case or a case arising out of Nazi confiscations. The dissent quotes extensively from Sabbatino, including that portion of the opinion which states that if a government no longer exists, the Court might view the case differently.

Mr. Justice Brennan interprets <u>Sabbatine</u> as having held that in certain circumstances the validity of a foreign act of state is a "political question," quoting (406 U.S.

p. 788, fn. 11) from <u>Baker v. Carr</u>, 369 U.S. 186, 211-212

(1962) the criteria by which the Court is to decide whether
a case involves a political question the courts should
abstain from deciding. Applying those standards, Mr. Justice
Brennan concludes that the Cuban expropriation is a political
question, based on the following factors:

"[T]he absence of consensus on the applicable international rules, the unavailability of standards from a treaty or other agreement, the existence and recognition of the Cuban government, the sensitivity of the issue to national concerns, and the power of the Executive alone to effect a fair remedy for all United States citizens..."

Mr. Justice Brennan believes a letter from the State Department suggesting that the Act of State doctrine need not be applied is only one factor the Court must consider. He observes (406 U.S. p. 788, fn. 12) that a comparison of First Estimal with Bernstein reinforces his conclusion, because, as the Government itself acknowledged, Bernstein was "a most unusual" case. Mr. Justice Prennan concludes, therefore, that

"the result, though not the rationale, in Bernstein may be defensible." 406 U.S. p. 789, fn. 12 cont'd.

Mr. Justice Brennan stresses, as was held in <u>Sabbatino</u>, that a letter from the State Department may be considered by the

federal courts as they shope the Act of State doctrine, but the courts cannot abdicate their responsibility to decide each case as it arises: "Representations from the Department of State are entitled to weight...but they cannot be determinative." 406 U.S. p. 790. Otherwise, as Mr. Justice Douglas points out:

"The Court becomes a mere errand boy for the Executive Branch which may choose to pick some people's chestouts from the fire, but not other's." 406 b.S. p. 773

the Court hold to the view that a "Bernstein letter" from the State Department decides the issue of applicability of the Act of State decirine. The four dissenters and Mr. Justice Douglas are of the opinion that each case should be determined on its merits, applying the criteria set forth in <u>Sabbatino</u> and re-affirmed by a majority of the Court in <u>First National</u> City. It is possible, as plaintiff suggests, that the instant case is sufficiently different from the Cuban expropriation cases so that the Supreme Court would not apply the Act of State doctrine, since at least two of the major considerations in those cases do not exist here: The Nazi German government no longer exists, and confiscations

similar to those alleged in this case have been universally condemned (though not by the Numberg Tribunal as war crimes, as previously pointed out). This Court is of the opinion, nevertheless, as stated in its May 20, 1974 decision, that the law at present is that stated in the first Bernstein the law at present is that stated in the first Bernstein case, Bernstein v. Van Hayohen Freres, S.A., 163 F.2d 246 (2d Cir. 1947), Cert. dem., 332 U.S. 772. We need not, however, rest our decision on this ground, since for the reasons stated above, the complaint fails to state a claim cognizable in this Court.

The defendant's motion is granted, and the amended complaint is dismissed.

Settle a final judgment on notice which shall provide that the bond to secure our order of February 5, 1974 vacating the attachment shall not be discharged or exonerated pending appeal.

Dated: New York, New York January 2, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. ERTEANT, JR. U. S. D. J.

As part of the original Notice of Motion to Remain

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

NOTICE OF SETTLEMENT

73 Civ. 5271 (C.L.B.)

SIRS:

pLEASE TAKE NOTICE that the attached order and judgment will be presented for settlement at the office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York on January 20, 1975, at 10:00 o'clock in the forenoon.

Dated: New York, New York January 15, 1975

Yours, etc.

JOHN R. HORAN
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(212) 593-6600

TO: WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.
Attorneys for Defendants
330 Madison Avenue
New York, N. Y. 10017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

CORRECTED ORDER AND JUDGMENT

73 Civ. 5271 (C.L.B.)

Defendants having made a motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the amended complaint; and

This matter having come on for argument before this Court on October 15, 1974, and counsel for all parties having been heard, to wit,

William T. Coleman, Jr., Esq. and John R. Horan, Esq., attorneys for plaintiff, and

Walter, Conston, Schurtman & Gumpel, P.C. (William Schurtman, Esq. appearing), attorneys for defendants, and

This Court having considered the amended complaint and the affidavits and briefs filed in support of and in opposition to said motion, and the argument of counsel, and due deliberation having been had thereon, and upon reading and filing the memorandum decision of this Court dated January 2, 1975, it is

ORDERDO AND ADJUDGED, that the amended complaint herein be and hereby is dismissed without prejudice as to any cause of action arising under the common law or statutes of any other nation ( and interpretable and with prejudice as to the cause of action stated therein based

CLB

CLB

upon the treaties specifically alleged in the amended complaint and the United States laws specifically alleged in the amended complaint, and it is further

ORDERED that the order and judgment entered herein on January 14 be and hereby is vacated and it is further

ORDERED, that the bond posted by defendants to secure this Court's order of February 5, 1974 vacating this Court's order of attachment dated January 15, 1974 shall not be discharged or expnerated pending plaintiff's appeal.

Dated: New York, New York January 21, 1975

/s/ Charles L. Brieant, Jr. U.S.D.J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

NOTICE OF APPEAL

73 Civ. 5271 (C.L.B.)

SIRS:

PLEASE TAKE NOTICE that the plaintiff, WILLY DREYFUS, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order and Judgment entered in this Court on January 21, 1975, dismissing the amended complaint herein.

Dated: New York, New York February 18, 1975

Yours, etc.

FOX GLYNN & MELAMED Attorneys for Plaintiff 299 Park Avenue New York, New York

TO: WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.
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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLY DREYFUS,

Appellant,

AUGUST VON FINCK, et al.,

Appellees.

MAY 1 5 1975

Received By FOX GLYNN & MELAMED

No. 75-7135

NOTICE OF MOTION TO REMAND

SIRS:

this Court, on June 2, 1975, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order remanding the above action to the United States District Court for the Southern District of New York for the purpose and reasons set forth in the annexed Memoranlum. Oral argument on this motion is requested.

Dated: New York, New York May 13, 1975

Yours, etc.

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JOHN HORAN
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Attorneys for Appellants

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLY DREYFUS,

Appellant,

No. 75-7135

AUGUST VON FINCK, et al.,

Appellees.

# MEMORANDUM IN SUPPORT OF MOTION TO REMAND

Appellant submits this Memorandum in support of his motion to remand the instant case.

This appeal involves an action for restitution and damages arising out of defendants alleged wrongful conduct in acquiring plaintiffs property under duress and without adequate consideration in Nazi Germany. Federal jurisdiction was asserted to exist because of diversity of citizenship, and because the alleged conduct violated four treaties to which the United States and Germany were parties or adherents — the Hague Convention, the Kellog-Briand Pact, the Versailles Treaty, and the Four Power Occupation Agreement.

See Amended Complaint, pp. 2-3. The District Court concluded

that there was no diversity of citizenship and that the treaties alleged did not provide an adequate basis for jurisdiction, and dismissed the complaint. Memorandum Opinions of Brieant, J., May 20, 1974, and January 3, 1975. This appeal followed.

In preparing appellant's brief, counsel for appellant concluded that there was a non-treaty basis for jurisdiction over certain aspects of the underlying and related controversies which was not considered in the District Court or resolved by the District Court's order. That basis is Law No. 59, "Restitution of Identifiable Property," promulgated by the American Military Government in Germany in 1947. Three questions of federal law would appear to arise under this law: (a) whether plaintiff was unfairly deprived of his property because he was Jewish, in violation of Article 3 of Law 59, (b) whether an agreement to settle this Law 59 claim, made by plaintiff and defendants in 1948, is enforceable, and (c) whether a subsequent settlement of that claim on 1951, made by plaintiff's attorney without his knowledge or consent, is invalid. Not only were those questions not considered or resolved by the District Court, but the facts giving rise to these questions were not alleged in that court.

Because the District Court's order dismissing the

Amended Complaint was expressly limited to the treaty and diversity bases of jurisdiction, plaintiff would be free, regardless

as restitutor), within the meaning of this Law, is the

of the outcome of this appeal, to commence a new action in federal court founded on Law No. 59 and alleging the particular facts relevant to that jurisdictional basis.

Counsel for appellants recognize, however, that it would be inefficient to make these closely related controversies the subject of successive or simultaneous law suits. Accordingly, on April 22, 1975 appellant requested the assistance of Counsel to the Court of Appeals in resolving this problem.

Letter of John Horan to Nathaniel Fensterstock. Mr.

Fensterstock met with counsel for the parties on April 28, 1975, but counsel for the parties were unable to agree upon Mr. Fensterstock's suggested resolution of this situation.

This motion to remand followed.

It is clear that the District Court did not consider or resolve any of the Law 59 questions. Neither in the Amended Complaint nor in any of his briefs did plaintiff refer to the existence of Law 59 or suggest jurisdiction might exist thereunder. There is no reason to believe the District Court was aware of the language of Law 59, since neither party provided the court with a copy of the Law, which appears to have been published only in the Military Covernment Gazette of November 10, 1947. Although the District Court issued two lengthy memorandum opinions, neither contained any reference to Law 59. The District Court's order dismissing the Amendment Complaint was expressly stated to be without prejudice

to any cause of action except

the cause of action stated therein based upon the treaties specifically alleged in the amended complaint and the United States laws specifically alleged in the amended complaint . . .

Order of January 21, 1975 (emphasis added). Law 59 was not among the laws or treaties specifically alleged in the Amended Complaint. The District Court declined to enter a more broadly worded order proposed by defendants. At a conference with the parties in January, 1975, which was not transcribed, Judge Brieant indicated a willingness to reconsider the existence of jurisdiction over this controversy if a new basis of jurisdiction could be suggested. The sole reference to Law 59 in the proceedings below was in a brief filed by defendants suggesting that plaintiff could not sue under the treaties alleged because his proper remedy was under Law 59.

It is clear that the District Court's order would not, on its face, preclude plaintiff from commencing a new action under any basis of jurisdiction, such as Law 59, other than the statutes and treaties specifically alleged in the Amended Complaint. Appellant, however, believes that it would be inefficient for these closely related controversies to be the subject of successive or simultaneous actions. The appropriate resolution of this situation would be to remand this action for the express purpose of permitting the District Court to

<sup>1/</sup> Defendants' Memorandum In Opposition To Plaintiff's Petition For Rehearing and Reargument, p. 10.

consider whether jurisdiction existed under Law 59 after plaintiff amended his complaint to add the Law 59 controversy.

At the April 28, conference with Mr. Fensterstock, appellees suggested that Judge Brieant had in fact decided the Law 59 issues. The record below, particularly the unambiguous language of the January 21 order, clearly reveal that those issues were not considered or decided below. Even if there were substantial question as to the meaning of Judge Brieant's order and opinions, a remand would nonetheless be appropriate. There is no reason to require this Court to speculate as to what Judge Brieant intended by his order when Judge Brieant can quickly and definitively resolve that question on remand. Such a remand will assure, not only that this Court is not obliged to resolve what may be an unnecessary or premature appeal, but also that any appellate consideration of the Law 59 issues will be based on a record which, unlike the present record, contains specific factual allegations bearing on the Law 59 claim. If, as appellees contend, Judge Brieant secretly decided the Law 59 issues, the remand will be a brief one and the subsequent appeal will be free of the present difficulties.

For these reasons the instant case should be remanded to the United States District Court for the Southern District of New York.

Respectfully submitted,

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EXHIBITS

As part of the original Notice of Motion to Remand, there was attached a copy of the Amended Complaint, and tne Brieant memorandum of May 20, 1974. These are not reproduced in this record as attachments to those papers since they are independently reproduced as Appendix S and L respectively.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WILLY DREYFUS,

Plaintiff,

-against-

AUGUST von FINCK, Munich, Germany, and MERCK, FINCK & CO., Munich, Germany,

Defendants.

CORRECTED ORDER AND JUDGMENT

73 Civ. 5271 (C.L.B.)

Defendants having made a motion pursuant to Rule
12(b) of the Federal Rules of Civil Procedure to dismiss the
amended complaint; and

This matter having come on for argument before this Court on October 15, 1974, and counsel for all parties having been heard, to wit,

William T. Coleman, Jr., Esq. and John R. Horan, Esq., attorneys for plaintiff, and

Walter, Conston, Schurtman & Gumpel, P.C. (William Schurtman, Esq. appearing), attorneys for defendants, and

This Court having considered the amended complaint and the affidavits and briefs filed in support of and in opposition to said motion, and the argument of counsel, and due deliberation having been had thereon, and upon reading and filing the memorandum decision of this Court dated January 2, 1975, it is

ORDERED AND ADJUDGED, that the amended complaint herein be and hereby is dismissed without prejudice as to any cause of action arising under the common law or statutes of any other nation or common international law and with prejudice as to the cause of action stated therein based

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upon the treaties specifically alleged in the amended complaint and the United States [Federal] laws specifically alleged in the amended complaint, and it is further

ORDERED that the order and judgment entered herein on January 14 be and hereby is vacated and it is further

ORDERED, that the bond posted by defendants to secure this Court's order of February 5, 1974 vacating this Court's order of attachment dated January 15, 1974 shall not be discharged or exonerated pending plaintiff's appeal.

Dated: New York, New York January 21, 1975

/s/ Charles L. Brieant, Jr. U.S.D.J.

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# MILITARY GOVERNMENT GAZETTE GERMANY

UNITED STATES AREA OF CONTROL

Published by
OFFICE OF MILITARY GOVERNMENT FOR GERMANY, (U.S.)

# AMTSBLATT DER MILITÄRREGIERUNG DEUTSCHLAND AMERIKANISCHES KONTROLLGEBIET

Herausgegeben von
OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)

Issue G V

Ausgabe G

10 November 1947

10. November 1947

MILITARY GOVERNMENT — GERMANY UNITED STATES AREA OF CONTROL

LAW NO. 59

# RESTITUTION OF IDENTIFIABLE PROPERTY

MILITÄRBEGJERUNG — DEUTSCHLAND AMERIKANISCHES KONTROLLGEBJET

GESETZ NR. 59

RÜCKERSTATTUNG FESTSTELLBARER VERMÖGENSGEGENSTÄNDE abroad of the cian

# Basic Principles

1. It shall be the purpose of this Law to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible property and aggregates of tangible and intangible property) to persons who were groundly deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, relation, nationality, ideology or political opposition to Xational Socialism. For the purpose of this Law deprivation of property for reasons of nationality shall not include measures which under recognized rules of international law are usually permissible against property of nationals of carry countries.

2. Property shall be restored to its former owner or to las successor in interest in accordance with the provisions of this Law even though the interests of other persons who had no knowledge of the wrongful taking must be subord tated. Provisions of law for the protection of purchase. In good faith, which would defeat restitution, shall be disregarded except where this Law provides otherwise.

# PART H CONFISCATED PROPERTY

#### ARTICLE 2

# Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

'(a) A transaction contra bonos mores, threats or duress, or an unlawful taking or any other tort;

(b) Seizure due to a governmental act or by abuse of such act;

(c) Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations; provided the acts described in (a) to (c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

2. It shall not be permissible to plead that an act was not wrongful or contra bones mores because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purbose of injuring the party affected by it for any of the leasons set forth in Article 1 shall be deemed a specific distance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the Greunstance that the opponent was, actually or by law, devented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to Setional Socialism. The Restitution Authorities (Restitu-

# ERSTER ABSCHNITT ALLGEMEINE VORSCHRIFTEN

# ARTIKEL 1

# Grundsatz

1. Zweck des Geselzes ist es, die Rückerstattung featstellbarer Vermögensgegenstände (Sachen, Rechte, Inbegriffe von Sachen und Rechten) an Personen, denen sie in der Zeit vom 30. Januar 1933 bis 3. Mai 1915 aus Gründen der Rasse, Religion, Nationalität, Weltinschauung oder politischen Gegnerschaft gegen den Nationalsoziahanus entzogen worden sind, im größtmöglichen Umfange bezehleunigt zu bewirken. Eine Entzichung von Vermögensgegenstanden aus Gründen der Nationalität im Sinne dieses Geretzes erstreckt sich nicht auf Maßnahmen, die unter anerikannten Regeln des internationalen Rechts Üblicherweise gegen Vermögen von Staatsangehörigen feindlicher Länder zulässig sind.

2. Vermögensgegenstände nach Maßgabe der Bestimmungen dieses Gesetzes sind auch dann an ihren ursprünglichen Inhaber oder dessen Rechtsnachfolger zurückzuerstatten, wenn die Rechte anderer Personen, die von dem begangenen Unrecht keine Kenntnis hatten, zurücktreten müssen. Der Rückerstattung entgegenstehende Vorschriften zum Schutze gutgläubiger Erwerber bleiben außer Betracht, soweit nicht in diesem Gesetz etwas anderes bestimmt i.st.

# ZWEITER ABSCHNITT ENTZOGENE VERRÜGENSGEGENSTÄNDE

# ARTHELL 2

# Entzichungsfälle

1. Vermögensgegenstände sind im Sinne dieses Gesetzes entzogen, wenn sie der Inhaber eingebüßt oder trotz begründeter Anwartschaft nicht erlangt hat infolge

(a) eines gegen die guten Sitten vorstoßenden Rechtsgeschäftes oder einer Drohung, oder einer wieterrechtlichen Wegnahme oder sonstigen unerlaubten Handlung,

(b) Wegnahme durch Staatsakt oder durch Mißbrauch eines Staatsaktes,

(c) Wegnabme durch Maßnahmen der NSDAP, ihrer Gliederungen oder angeschlossenen Verbände,

sofern die unter (a) bis (c) fallenden Tatbestände durch Verfolgungsmaßnahmen aus den Gründen des Artikels 1 verursacht weren oder solche Verfolgungsmaßnahmen darstellten.

2. Niemand wird mit der Einwendung gehört, seine Handlungsweise sei deshalb nicht rechts- oder sittenwidrig gewesen, weil sie allgemeinen Anschauungen entsprochen habe, die eine Schlechterstellung einzelner wegen ihrer Rasse, Religion, Nationalität, Weltanschauung oder ihrer Gegnerschaft gegen den Nationalsozialismus zum Inhalt hatten.

3. Als Wegnahme durch Staatsakt im Sinne des Absatz 1(b) gelten u. a. Einziehung, Verfallerklärung, Verfall kraft Gesetzes und Verfügung auf Grund staatlicher Auflage oder durch staatlich bestehten Treubänder. Als Wegnahme durch Staatsakt gilt auch die Einziehung durch strafgerichtliches Urteil, wenn das Urteil durch Gerichtsbeschluß oder kraft Gesetzes aufgehoben worden ist.

4. Als Mißbrauch von Stratsakten gilt imbesondere eine auf allgemeinen Vorschritten beruis ude, jedoch aus schließlich oder vorwiegend zum Zwecke der Benachteitigung des Betroffenen aus den Gründen des Artikels I ergangene Entscheidung oder Verfugung eines Gerichts oder einer Verwaltung behörde, ferner die Erwirkung von Entscheidungen und Vollstreckungsmaßnabmen unter Ausuntzung des Unstandes, daß jemand wegen seiner Rasse, Religion, Nationalität, Weltanschauung oder seiner politischen Gegneschaft gegen den Nationalsozialismus zur Wahrung teiner Rechte tatsächlich oder rechtlich nicht imstande wirk. Die Wiedergutmachungsorgane (Wiedergutmachungsbehöld)

tion Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not it may otherwise be appealed or respended under existing law.

## ARTICLE: 3

# Presumption of Confiscation

- 1. It shall be presumed in favor of ony claimant that the following transactions entered into between 30 January 1933 and 2 May 1945 constitute acts of confiscation within the meaning of A. acts 2:
  - (a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
  - (b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.
- 2. In the absence of other factors proving an act of confiscation within the meaning of Article 2, the presumptions set forth in paragraph 1 may be rebutted by showing that the transferor was paid a fair purchase price. Such evidence by itself shall not, however, rebut the presumptions if the transferor was found the free right of disposal of the purchase price on any of the grounds set forth in Article 1.
- 3. A fair purchase price within the meaning of this Article shall mean the amount of money which a willing buyer would pay and a willing seller would take, taking into consideration, in the case of a commercial enterprise, the normal good will which such enterprise would have in the hands of a person not subject to persecutory measures referred to in Article 1.

# ARTICLE 4

# Power of Avoidance

- 1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuremberg laws) to 8 May 1945 may, because of the interest imposed on such class, be avoided by a claimant where each transaction involved the transfer or relinquishment of any property unless:
  - (a) The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
  - (b) The transferce protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his ossets abroad or through similar assistance.
- 2. In determining under paragraph 1 (a) whether the transaction would have taken place even in the absence of National Socialism, the fact that

the transferor himself offered to sell the property to the transferce, or

the transferor received a fair purchase price (see Article 3, paragraph 3) the free right of disposal of which was not denied him on any of the grounds set forth in Article 1.

shall be considered by the Restitution Authority together with all other facts, but neither fact, either singly or in conjunction with the other, shall be sufficient to show that the transaction would have taken place even in the absence of National Socialism.

Wiedergutmachungskammer und Beschwerdegericht) haben eine solche Entscheidung oder Verfügung eines Gerichts oder einer Verwaltungsbehörde als nichtig zu behendeln ohne Rücksicht darauf, ob sie nach geltendem Recht rechtskräftig ist, und ob sie im Wiederaufnahmeverfahren angefochten werden könnte.

# ARTIREL 8

# Entzichungsvermutung

- 1. Zu Gunsten eines Berechtigten wird vermutet, daß ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 abgeschlossenes Rechtsgeschäft eine Vermögensentziehung im Sinne des Artikels 2 darstellt:
  - (a) Wenn die Veräußerung oder Aufgabe des Vermögensgegenstandes in der Zeit der Verfolgungsmaßnahmen von einer Person vorgenommen worden ist, die Verfolgungsmaßnahmen aus Gründendes Artikels 1 unmittelbar ausgesetzt war;
  - (b) wenn die Veräußerung oder Aufgabe eines Vermögensgegenstandes seitens einer Person vorgenommen wurde, die zu einer Gruppe von Personen gehörte, welche in ihrer Gesamtheit aus den Gründen des Artikels 1 durch Maßnahmen des Staates oder der NSDAP aus dem kulturellen und wirtschaftlichen Leben Deutschlands ausgeschaltet werden sollte.
- 2. Vorausgesetzt, daß keine anderen Tatsachen für das Vorliegen einer Entzichung im Sinne des Artikels 2 sprechen, kann die Vermutung des Absatz 1 durch den Beweis widerlegt werden, daß dem Veräußerer ein angemessener Kaufpreis bezahlt worden ist. Dieser Beweis allein widerlegt jedoch die Vermutung nicht, wenn dem Veräußerer aus den Gründen des Artikels 1 das Recht der freien Verfügung über den Kaufpreis verweigert worden ist.
- 3. Ein angemessener Kaufpreis im Sinne dieses Artikels ist derjenige Geldbetrag, den ein Kauflustiger zu zahlen und ein Verkaufslustiger anzunehmen bereit wäre, wobei bei Geschäftsunteriehmen der Firmerwert (good will) berückrichtigt wird, den ein solches Unternehmen in den Händen einer Person hätte, die Verfolgungsmaßnahmen aus den Gründen des Artikels 1 nicht unterworfen war.

# ARTIKEL 4

# Anfechtung

- 1. Der Berechtigte kann ein Rechtsgeschäft, das von einer zur Gruppe des Absatz 1(b) des Artikels 3 gehörigen Person in der Zeit vom 15. September 1935 (Datum der ersten Nürnberger Gesetze) bis zum 8. Mai 1945 vorgenommen worden ist, wegen der Zwangslage, in der sich diese Gruppe befand, anteenten, wenn das Rechtsgeschäft die Veräußerung oder Aufgabe eines Vermögensgegenstandes zum Inhalt hatte, es sei denn, daß
  - (a) das Rechtsgeschäft als solches und mit seinen wesentlichen Bestimmungen auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre, oder
  - (b) der Erwerber die Vermögensinteressen des Berechtigten (Artikel 7) oder seines Rechtsvorgängers in besonderer Weise und mit wesentlichem Erfolginsbesondere durch Mitwirkung bei einer Vermögensübertragung ins Ausland oder durch ähnliche Maßnahmen, wahrgenommen hat.
- 2. Der der Feststellung, ob nach Absatz I (a) das Rechtsgesch ab auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre, können die Tatsachen, daß der Veräußerer den Vermögenszegenstand selbst dem Erwerber angeboten oder daß er einen angemessenen Kaufpreis (Artikel 3, Absatz 3) erhalten hat, oime daß ihm dabei aus den Gründen des Artikels I die freie Verfügung über den Kaufpreis verweigert wurde, zusammen mit anderen Tatsachen in Betracht gezogen werden. Es sollen aber diese beiden Tatsachen, jede für sich allein oder beide zusammen, nech nicht zum Nachweis dafür ausreichen, daß das Rechtsgeschäft auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre.

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3. Similarly neither of these facts, either singly or in conunction with the other, shall be sufficient to show that the latinant is estopped from exercising the power of avoidance by reason of his own previous conduct or that of his pre-

ecessor in interest.

he term "claim for restitution" as used in this Law has be deemed to include all claims based on the right a exercise the power of avoidance. The exercise of the ower of avoidance shell have the effect that the property ransferred or relinquished pursuant to the voided transaction shall for the purposes of this Law be deemed to be only and disposerty.

ontistated property.

5. The filing of a claim for restitution shall, whether or not it is specifically stated, be deemed to be an exercise of be right of avoidance on behalf of the person entitled to

cereise such right.

# ARTICLE 5

# Donations

Where a person persecuted for any of the reasons set orth in Article 1 has transferred property to another grantorsly within the period from 30 January 1933 to 8 May 915, it shall be presumed that the transfer constituted a ailment or fiduciary felationship rather than a donation. This presumption shall not artist where the personal relations between the transferor and the recipient make it robable that the transfer constituted a donation based on noral considerations (Anstandsschenkung); no claims for estitution may be asserted in such cases.

# ARTICLE 6

# Bailment and Fiduciary Relationships

1. The provisions of Parts III to VII of this Law shall not pply to bailments and fiduciary agreements entered into n order to prevent damage to property threatened for any f the reasons set forth in Article I, or to mitigate existing lamage to property inflicted for such reasons.

2. The claimant (Article 7) may at any time terminate octs and any other arrangements described in partial 1, such termination to be effective immediately, any contractual or statutory provisions to the contrary notwith-

tanding

3 It shall not be an admissible defense for the ballee or declary that the contracts and agreements described in arragraph I violated a statutory prohibition existing at the line of the transaction or enacted thereafter, or that a catulory or contractual form requirement had not been emplied with, provided that this failure was attributable a the National Socialist regime.

# PART III:

# GENERAL PROVISIONS ON RESTITUTION

# ARTICLE 7

# Person Entitled to Restitution (Hereinsfler called Claimant)

The claim for restitution shall appertain to any person classe property was confiscated (hereinafter called Persecuted Person) or to any successor in interest.

# ARTICLE 8

# Successorship of Dissolved Associations

1. If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved, may be enforced by a successor organization to be appointed by Military Govern-

The provisions of paragraph 1 shall not be applicable to the organizations referred to in Article 9.

3. Eber sowenig sollen diese beider Tatsachen, jede für sich allein oder beide zusammen, zum Nachweis dafür ausreichen, daß der Berechtigte sich durch die Anfechtung in unzulässiger Weise zu seinem oder seines Rechtsvorgängers früheren Verhalten in Widerspruch setzt.

4. Der Ausdruch "Rücherstattungsanspruch" im Sinnsdieses Gesetzes umfaßt auch das Anfechtungsrecht und die aus diesem folgenden Anscrüche. Die Ausübung des Anfechtungsrechts hat die Wirkung, daß der durch das angefochtene Rechtsgeschäft übertragene oder aufgegebene Vermögensgegenstand als entzogenes Vermögen im Sinne dieses Gesetzes gilt.

5. Die Anmeldung eines Rückerstattungsanspruchs gilt als Ausübung des Anfechtungsrechts seitens des Anfechtungsberechtigten ohne Rücksicht darauf, ob in der Anmeldung eine ausdrückliche Anfechtungserkläfung enthalten ist.

#### ARTUKEL 5

# Schenkungen

Hat ein aus den Gründen des Artikels 1 Verfolgter in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 einem anderen Vermögensgegenstände unentgeltlich überlassen, so wird vermutet, daß keine Schenkung, sondern eine Verwahrung oder ein Treuhandverhältnis vorliegt. Die Vermutung gilt nicht, soweil nach den persönlichen Beziehungen zwi chen dem Überlassenden und dem Empfänger das Vorliegen einer Anstandsschenkung naheliegt: ein Rückerstattungsanspruch ist in diesem Falle nicht gegeben.

# ARTIKEL 6

# Verwahrungs- und Treuhandverhällnisse

1. Auf Verwehrungsverträge und treuhänderische Rechtsgeschäfte, die die Abwendung oder Verminderung eines aus den Gründen des Artikels 1 drohenden oder eingetreteren Vermögensschadens bezweckten, finden die Vorschriften des III. bis VII. Abschnitts dieses Gesetzes keine Anwendung.

2. Verträge und sonstige Rechtsgeschäfte der in Absatz 1 bezeichneten Art können ohne Rücksicht auf entgegenstehende vertragliche oder gesetzliche Bestimmungen von dem Berechtigten (Artikel 7) jederzeit mit sofortiger Wirkung gekändigt werden.

3. Der Verwahrer oder Treuhänder wird nicht mit dem Einwand gehört, daß Verträge und sonstige Rechtsgeschäfte der in Absatz 1 bezeichneten Art gegen ein zur Zeit ihres Abschlusses bestehendes oder später erlassenes gesetzliches Verbot verstoßen, oder daß ein auf Gesetz oder Rechtsgeschäft beruhendes Formerfordernis nicht erfüllt wurde, sofern die Form wegen der nationalsozialistischen Herrschaft nicht eingehalten wurde.

# DRITTER ABSCHNITT

# ALLGEMEINE BESTIMMUNGEN ÜBER DIE RÜCKERSTATTUNG

# ARTIKEL 7

# Berechtigter

Der Rückerstattungsanspruch steht demjenigen zu, dem ein Vermögensgegenstand entzogen wurde (Verfolgter) eder seinem Rechtsnachfolger.

# ARTIKUL S

# Rechtsnachfolger aufgelöster Personenvereinigungen

1. Ist eine juristische Person oder eine nicht rechtsfähige Personenvereinigung aus den Gründen des Artikels I aufgelöst oder zur Selbstauflösung gezwungen worden, so kam der Rückerstattungsunspruch, der ihr zustehen wirde, wenn sie nicht aufgelöst worden wäre, von einer von der Militärregierung zu bestimmenden Nachfolgeorganisation geltend gemacht werden.

2. Die Verschriften des Absatz 1 finden auf die in Artikel 9 aufgeführten Gesellschaften und juristischen Personen keine Anwendung.

#### Rights of Individual Partners

If a partnership, company or corporation organized under the Commercial Law, was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution may be asserted by any associate (partner, member or shareholder). The claim for restitution shall be deemed to have been filed on behalf of all associates who have the same cause of action. The claim may be with-drawn or compromised only with the approval of the appropriate Be titution Authority. Notice of the filing of the claim shall be given to all other known associates or their successors in interest and to a successor organization connectent according to Article 10. Within the limits of its authority the successor organization may represent in the proceedings any associate whose address is unknown, in accordance with the provisions of Article 11.

# AUTICLE 10

# Successor Organization as Heir to Persecuted Persons

A successor organization to be appointed by Military Government, shall, instead of the State, be entitled to the entire estate of any persocuted person in the case provided for in Section 1936 of the Civil Code (Escheat of estate of person dying without heirs). Neither the State nor any of its subdivisions nor a political self-governing body will be appointed as successor organization. The same shall apply to other rights in the nature of escheat based on any other provision of law.

# ARTICLE 11

# Special Rights of Successor Organizations

1. If within six months after the effective date of this Law no petition for restitution has been filed with respect to conficcated property, a successor organization appointed pursuant to Article 10 may file such a petition on or before 31 December 1948 and apply for all measures necessary to safeguard the property.

2. If the claimant himself has not filed a petition on or before 31 December 1948, the successor organization by virtue of filing the petition shall acquire the legal position of the claimant. Only after that date, and not prior thereto,

shall it be entitled to prosecute the claim.

3. The provisions of paragraphs 1 and 2 hereof shall not apply if, and to the extent to which, the claimant, in the period from 8 May 1945 to 31 December 1948, has delivered a waiver of his claim for restitution, in writing and in express terms, to the restitutor, the appropriate Restitution Authority, or the Central Filing Agency.

# ARTICLE 12

# Obligation of Successors in Interest to Give Information

1. If so ordered by the appropriate Restitution Authority a claimant who acquired the claim for restitution directly or indirectly from the persecuted person shall submit, if known to him, either the address of his predecessors in interest, in particular of the persecuted person, or of his heirs, or execute an affidavit to the effect that he does not know the present address or any data from which it might be ascertained

2. The successor organization appointed pursuant to Article 10 shall submit the address of the person entitled to restitution, provided it is known to it, or such data known to it which might serve to locate this person, or an affidavit signed by its legal representative to the effect that it knows neither the address of the person entitled to restitution nor any data which might serve to locate this

# ARTICLE 13

# Designation of Successor Organizations

Regulations to be issued by Military Government will provide for the manner of appointment of successor orpanizations, their obligations to their persecutee charges, and any further rights or obligations they may have under Military Government or German law.

# AUTIMEL 0

# Rechte einzelner Gesellschafter

War eine Gesellschaft oder juristische Pecson des Hau-delsrechts aus den Gründen des Artikels 1 aufgelöst oder zur Selbstauflösung gezwungen worden, so kann der frackerstallungsauspruch, solunge keine Nachfolgerorganisation bestimmt Ist, von jedem Gesellschafter geltend gemacht werden. Der Rückerstattungsanspruch gilt als zu Gensten aller Gesellschafter, denen der gleiche Anspruch zusteht, erhoben. Die Rücknahme des Antrags oder ein Vergeich muß von dem Wiedergutmachungsorgan genebmigt verdea, vor dem der Anspruch anhängig ist. Von der Etherang des Auspruchs müssen die anderen bekannten Gesellschafter oder ihre Rechtsnachfolger einschließlich einer gemäß Artikel 10 zuständigen Nachfolgeorganisation benachrichtig werden. An die Stelle von Gesellschaftern, deren An ehrift unbekannt ist, tritt für das Verfahren die Nachfolgeorganisation im Rahmen ihrer Befugnisse nach Maßgabe de Artikels 11.

# ARTIKEL 10

# Nachfolgeorganisation als Erbe von Verfolgten

Im Falle des § 1936 BGB, ist Erbe eines Verfolgten hinsichtlich des gesamten Nachlasses an Stelle des Staates eine von der Militärregierung zu bestimmende Nachfoleeorganisation. Als Nachfolgeorganisation darf weder der Staat, noch eine Gliederung desselben, oder ein gemeindlicher Selbstverwaltungskörper bestimmt werden. Das gleiche gilt für Heimfall-, Anfall- und Rückfallrechte auf Grund sonstiger geretzlicher Bestimmungen.

# ARTIKEL 11

# Besondere Rechte der Nachfolgeorganisation des Artikels 10

1. Eine nach Artikel 10 bestimmte Nachfolgeorganisation kann, wenn innerhalb von seehs Monaten nach dem In-krafttreten dieses Gesetzes hinsichtlich eines entzogenen Vermögensgegenstandes kein Rückerstattungsanspruch angemeldet wird diesen bis zum 31. Dezember 1945 anmeiden und alle zur Sicherstellung des Vermögensgegenstandes erforderlichen Maßnahmen beantragen.

2. Sofern nicht der Berechtigte bis zum 31. Dezember 1943 seinerseits den Anspruch anmeldet, erwirbt die Nachfolgeorganisation auf Grund ihrer Anmeldung die Rechtsstellung des Ferechtigten. Erst mit diesem Rechtserwerb erlangt sie

das decht, den Amspruch weiter zu verfolgen.

3. Die Absätze 1 und 2 finden keine Anwendung, soweit der Berechtigte in der Zeit vom 8. Mai 1945 bis zum 31. Dezember 1948 schriftliche und ausdrücklich gegenüber dem Rückerstattungspflichtigen, der zuständigen Rückerstat-tungsbehörde oder dem Zentralanmeldeamt auf seinen Rückerstattungsanspruch verziehtet hat.

# ARTHEEL 12

# Auskunfspflicht von Rechtsnachfolgern

1. Berechtigte, die den Rückerstattungsanspruch mittelbar oder unmittelbar von dem Verfolgten erworben haben. sind auf Anordnung eines Wiedergulmachungsorgans verpflichtet, eine ihren bekannte Anschrift ihrer Rechtsvorgänger, insbesondere des Verfolgten oder seiner Erben, mitzufeilen oder eine eidesstattliche Versicherung darüber beizubringen, daß ihnen weder deren gegenwärtige Anschrift noch Anhaltspunkte zu deren Ermittlung bekannt sind.

2. Eine nach Artikel 10 bestimmte Nachfolgeorganisation ist veroflichtet, eine ihr bekannte Anschrift des Berecktigten oder ihr bekannte Anhaltspunkte zur Ermittlung desselben anzugeben oder eine eidesstattliche Versicherung eines gesetzlichen Vertreters darüber beizubringen, daß weder die gegenwärtige Anschrift des Berechtigten noch Anhaltspunkte zur Ermittlung desselben bekannt sind.

# ARTIKEL 13

# Bestimmung von Nachfolgeorganisationen

Ausführungsbestimmungen der Militärregierung werlen des näheren regeln: Das Verfahren betreffend die Bestimnating von Nachfolgeorganisationen, deren Pflichten gesch über den betreuten Geschädigten und deren sonstige Rochte und Pflichten nach Maßgabe des Rechts der Militarresrung und des deutschen Rechts.

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# " Unless this Law provides otherwise, the procedure shall getroffen sind, sind für das Verlaaren die

# ARTICLE 14

# Persons Liable to Make Restitution

The person liable to make restitution thereinafter referred to as restitutor), within the meaning of this Law, is the present possessor of confiscated tangible property or the present holder of a confiscated intangible interest, or of an aggregate of tangible and intangible property.

# ARTICLE 15

# Effect of an Adjudication of a Restitution Claim

1. Unless otherwise provided in this Law, a judgment directing restitution shall have the effect that the less of the preverty shall be deemed not to have occurred and that afteracouried interests by third persons shall be deemed not to have been acquired.

2. Any adjudication of a restitution claim shall be effective for and against any person who participated in the proceeding or who, being entitled to participate, was duly served.

# ARTICLE 16

# Alternative Claim for Additional Payment

If he relinquishes all other claims under this Law the claimant may demand, from the person who first acquired the preserve, payment of the difference between the price received and the fair purchase price of the property as defined in Article 3, paragraph 3. Proper interest shall be added to this amount in accordance with the provisions on profits contained in this Law.

- 2. The demand for payment shall not be permissible:
  - (a) after the property has been restored to the claimant by a judgment no longer subject to appeal; or
  - (b) after the Restitution Agency or Chamber has rendered a decision on the merits; or
  - (c) after the claimant and the restitutor have reached an amicable agreement with regard to the restitution claim.

# ARTICLE 17

# Valuation

1. Where the value of property is relevant according to the previsions of this Law, increases in the price caused by the decrease of the purchasing power of money shall not be used to decrease in the value.

2 Future implementing regulations may provide for the valuation of property which, because not now determinable, is at present not subject to the property tax. The provision of Article 27, paragraph 2 shall remain unaffected.

# PART IV

# IMITATIONS ON THE RIGHT TO RESTITUTION

# ARTICLE 18

# Expropriation

1. Confiscated property which, after the time of confiscation, was expropriated for a public purpose, or sold or existed to an enterprise for the benefit of which the right of exprepriation could be exercised, shall not be subject to critication if on the effective date of this Law the property critication and public purpose, and if such purpose is still recognized as lawful.

2 If property is not subject to restitution for the reasons of forth in paragraph 1, the present owner shall compensate the claimant adequately to the extent to which his claims pursuant to Article 29 et seg. infra, do not result in such compensation.

# ARTIKEL 14

# · Rückerstattungspflichtiger

Unter dem Rückerstattungspflichtigen im Sinne dieses Gesetzes zu verstehen ist der derzeitige Inhaber der Eigentümerstellung an der entzogenen Sache oder derzeitige Inhaber des entzogenen Rechts oder Inbegriffs von Sachen und Rechten.

# ARTIKEL 15

# Rechtswirkung der Entscheidung über den Rückerstattungsanspruch

1. Eine dem Rückerstattungsanspruch stattgebende Entscheidung hat die Wirkung, daß der Verlust des Vermögensgegenstandes als nicht eingetreten, und später erworbene Rechte Dritter als nicht erworben gelten, soweit nicht dieses Gesetz etwas anderes bestimmt.

 Eine Entscheidung über den Rückerstattungsanspruch wirkt für und gegen alle Personen, die am Verfahren teilgenommen haben oder zur Teilnahme am Verfahren berechtigt waren und hierzu vorschriftsmäßig aufgefordert wurden.

# ARTIKEL 16

## Wahlweiser Anspruch auf Nachzahlung

1. Der Berechtigte kann unter Verzicht auf alle sonstigen Ansprüche aus diesem Gesetz verlangen, daß ihm der Ersterwerber den Unterschied zwischen dem erlangten Entgelt und dem angemessenen Preis (Artikel 3, Absatz 3) des Vermögensgegenstandes nachbezahlt. Zu dem Unterschiedsbetrag treten angemessene Zinsen; hierbei finden die Vorschriften dieses Gesetzes über Nutzungen entsprechende Anwendung.

2. Das Verlangen ist nicht mehr zulässig,

- (a) wenn der Vermögensgegenstand dem Berechtigten rechtskräftig wieder zuerkannt ist,
- (b) wenn hierüber eine Sachentscheidung der Wiedergutmachungsbehörde oder der Wiedergutmachungskammer ergangen ist,
- (c) wenn sich der Berechtigte mit dem Rückerstattungspflichtigen über den Rückerstattungsanspruch geeinigt hat.

# ARTIKEL 17

# Wertberechnung

 Soweit es nach den Bestimmungen dieses Gesetzes auf den Wert eines Vermögensgegenstandes ankommt, gelten als Wertsteigerung nicht Preiserhöhungen, die durch Verminderung der Kaufkraft des Geldes hervorgerufen sind.

2. Für die Bewertung von Vermögensgegenständen, die wegen Unbestimmbarkeit zur Zeit nicht zur Vermögensteuer herangezogen werden, bleiben Ausführungsvorschriften vorbehalten. Die Bestimmung des Artikels 27. Absatz 2 bleibt unberührt.

# VIERTER ABSCHNITT

# BEGRENZUNG DER RÜCKERSTATTUNG

# ARTIKEL 18

# Zwangsenteignung

1. Entzogene Vermögensgegenstände, die nach der Entziehung für einen öffentlichen Zweck zwangsenteignet oder an ein Unternehmen veräußert eder einem Unternehmen zugewendet wurden, zu dersen Gunsten eine solche Zwangsenteignung stattfinden konnte, naterliegen der Rückerstattung nicht, wenn im Zeitpunkt des Inkraftitetens dieses Gesetzes der Vermögensgegen and doch für einen öffentlichen Zweck benützt wird und dieser Zweck noch als gesetzmäßig anerkannt ist.

2. Unterliegen Vermögensgegenstände aus den in Absatz 1 bezeichneten Gründen nicht der Rückerstattung, so muß der jetzige Eigentümer den Berechtigten für den Wert des entzogenen Vermögensgegenstandes angemessen entschädigen, soweit die Ansprüche gemäß Artikel 29 ff. dieses Gesetzes nicht zu einer solchen Entschädigung führen.

#### ARTICLE 15

# Protection of Ordinary and Usual Business Transactions

Except as provided in Articles 20 and 21, tangible personal property shall not be subject to restitution if the present owner or his predecessor in interest acquired it in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property. However, the provisions of this Article shall not apply to religious objects or to property which has been acquired from private ownership if such property is an object of unusual artistic, scientific, or sentimental personal value, or was acquired at an auction, or at a private side in an establishment engaged to a considerable extent in the business of disposing of conficated property.

# ARTICLE 20

### Money

Money shall be subject to restitution only if at the time be acquired the money the restitutor knew or should have known under the circumstances that it had been obtained by way of confiscation.

#### ARTICLE 21

# Beater Instruments

- 1. Bearer instruments shall not be subject to restitution if the present holder proves that, at the time he acquired the instrument, he neither knew nor should have known under the circumstances that the instrument had been confiscated at any time. Unless special circumstances indicate otherwise, good faith shall be presumed within the score of this provision, if such property was acquired in the course of ordinary and usual business transactions, especially on the stock exchange, and if the transaction did not involve a dominant participation.
- 2. The provisions of paragraph 1 shall also apply to interests in bearer instruments deposited in a central account (Sammelverwahrum)
- 3. Bearer instruments and interests in bearer instruments shall, however, be unconditionally subject to restitution if they represent:
  - (a) a participation in an enterprise with a number of members, such as a family corporation; or
  - (b) a participation in an enterprise the shares of which had not been negotiated on the open market; or
  - (c) a dominant participation in an enterprise as to which it was known, generally or in the trade, that a dominant participation was held by persons who belonged to one of the classes described in Article 3, paragraph 1 (b); or
  - (d) a dominant participation in a business establishment which was registered under the Third Ordinance to the Reich Citiz Law (Beichsbürgergesetz) of 14 June 1933 (RGBl. I, p. 627).
- 4. For the purpose of subsections (c) and (d) of paragraph 3. a participation shall be deemed to be dominant if it permitted the exercise of a considerable amount of influence upon the management of the business enterprise either by itself or on the basis of a working agreement which existed prior to or at the time of the confiscation.

# ARTICLE 22

# Restitution in Event of Changes in the Legal or Financial Structure of an Enterprise

If a participation of the type described in Article 21. paragraph 3 had been a vib cated and if the enterprise had been dissolved or me god into, or consolidated with, or transformed into anothe, enterprise, or had been changed in any other way in its legal or financial structure, or if its assets had been transferred a olly or in part to another enterprise, the claimant may demand that he be given an at ropriate share in the modified or newly formed enterprice or in the enterprise which had acquired wholly or in part the assets of the original enterprise, thereby, restoring as far as possible his original participation and the rights incident thereto.

# ARTHEEL 19

# Schutz des ordnungsmäßigen fiblichen Geschaftsverbehre

Verbehaltlich der Bestimmungen der Artikel 20, 21 un-terliegen nicht der Rückers'attung bewegliche Suchen, die der Eigentümer oder sein Rechtsvorgänger im Wege des ordnungsmäßigen üblichen Geschäftsverkehrs aus einen einschlägigen Unternehmen erworben hat. Dies gilt nich für Kultgegenstände; es gilt feiner nicht für Gegens ja de von besonderem künstlerischen oder wissenschaftlie Wert oder besonderem persönlichen Erinnerung wert, so fern sie aus Privatbesitz stammten oder im Wege der Versteigerung oder von einem Unternehmen erworben wurden. das sich in erheblichem Umfange mit der Verwertung entzogener Vermögensgegenstände befaßte.

# ARTIKEL 20

#### Geld

Geld unterliegt der Rückerstattung nur, wenn der Rückerstattungspflichtige bei seinem Erwerb wußte oder den Umständen nach annehmen mußte, daß es im Wege der Entziehung erlangt worden war.

# ARTHEEL 21 Inhaberpapiere

- 1. Inhaberpapiere unterliegen der Rückerstatlung nicht, wenn der Inhaber nachweist, daß er zur Zeit des Erwerbs weder wußte noch den Umständen nach annehmen melte, deß das Inhaberpapier zu irgendeiner Zeit Gegen fand einer Entzichung war. Sofern nicht besondere Umstände ents gegen tehen, ist guter Glaube im Sinne dieser Bedimmung wenn der Erwerb im ordnungsmäßlich üblichen Geschäftsverkehr, insbesondere im Börsenverkehr erfolgte, und es sich nicht um eine maßgebliche Beteiligung handelte.
- 2. Die Bestimmungen des Absatz 1 finden auch Anwendung auf Anteilsrechte an Inhaberpapieren, die sich in Sammelverwahrung befinden.
- 3. Inhaberpaniere cowie Anteilsrechte an solchen unterliegen jedoch bedingungslos der Rückerstattung, wenn sie darstellen
  - (a) eine Beteiligung an Unternehmen mit geringer
  - Gesellschafterzahl, z. B. Familiengesellschaften.

    (b) eine Beteiligung an Unternehmen, deren Anteile im allgemei en Geschäftsverkehr nicht gehandelt wurden
  - (c) eine maßgebliche Beteiligung an Unternehmen, von denen es allgemein oder in Geschäftskreisen bekannt war, daß eine maßgebliche Peteiligung ar ihnen in der Hand von Personen war, die zu einer der in Artikel 3, Absatz 1 (b) bezeichneten Gruppen gehörten.
  - (d) eine maßgebliche Beteiligung an Gewerbebetrieben, die auf Grund der deitten Verordnung zum Reichsbürgergesetz vom 14. 6. 1938 (RGBl. I S. 627) in ein
- Verzeichnis eingetragen wurden. Als maßgeblich im Sinne der Bestimmungen in Absatz 3 (c) and (d, gilt eine Beteiligung dann, wenn sie durch sich allein oder auf Grund einer vor oder bei der Entzichung bestaudenen Interessenverbindung einen erheblichen Einfluß auf die Geschäftsführung des Unternehmeas ermöglichte.

# ARTIKEL 22

# Rückerstattung bei Veränderung der rechtlichen oder Kapitalstruktur von Unternehmen

1st eine Beteiligung der in Artikel 21 Absatz 3 bezeichneten Art entzogen worden und ist das Unternehmen selbst aufgelöst oder mit einem anderen Unternehmen ver-schmolzen oder in ein anderes Unternehmen ungewande". oder sonstwie in seiner rechtlichen Struktur oder seiner Kapitalstruktur verändert worden oder ist dessen Vermögen ganz oder teilweise auf ein anderes Unternehmen übertragen worden, so kann der Berechtigte verlangen, daß er an dem veränderten oder neu gestalteten Unternehmen oder dem Unternehmen, das das Vermögen des ursprüngliches Unternehmens ganz oder tellweise übernommen hat, is einer angemessenen Weise beteiligt wird, die, soweit prögenden Rechte wiederhanstalt. Benden Rechte wiederherstellt.

#### ARTICLE 23

# Enforcement of the Principles Set Forth in Article 22

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The Restitution Chamber shall take all measures necessary and appropriate to effectuate the rights granted to the claimant under Article 22, provided his claims under Article 29 et seq, do not result in sufficient indomnification within the purview of Article 22. To that end the Restitution Chamber hall order, if necessary, the cancellation, new issue or exchange C shares, participation certificates, interim certificates, and other instruments evidencing a participation; or the establishment of a partnership relation between the claimant and the enterprise as described in Article 22, and it shall order the performance of any act required by law in order to effectuate those rights. These measures shall be taken primarily at the expense of those who are liable to make restitution according to the principles of this Law. It such measures would affect any other shareholder they shall be ordered only to the extent to which such other shareholder benefited directly or indirectly from the contiscation in connection with the facts as described in Article 22; or if the enterprise itself would be liable to make restitution or to damages under this Law or under the generally applicable rules of law, especially on the principle of respondent superior.

#### ARTICLE 24

# Other Enterprises

The previsions of Articles 22 and 23 shall be applicable if the object of the confiscation was a business owned by an individual; or a participation in a partnership or a limited partnership corporation (Kommanditgesellschaft auf Aktien); or a share in an association with limited liability (Gesellschaft mit beschröchter Haftung) or in a cooperative; or a share of a similar legal nature.

# ARTICLE 25

# Service

Insofar as it may become necessary pursuant to Articles 22 to 21 to make service on any unknown associate or on any associate whose present address is unknown, service shall be made by publication pursuant to Article 61.

# ARTICLE 26

# Delivery of a Substitute in Lieu of Restitution

1. Where subsequent to the confiscation the object otherwise subject to restitution has undergone fundamental cleages considerably enhancing its value, the Restitution Chamber may order the delivery of an adequate substitute in lieu of restitution; in determining the adequacy of the seb-titute the Restitution Chamber shall consider the value of the property at the time of the confiscation and the untable interests of the parties. The claimant may, however, demand the assignment of an appropriate share in the property unless the restitutor offers a substitute of smalar nature and of like value. The claimant may accordingly heaveful for the provisions of the first and second sentence blove, even if the fundamental change did not result in a considerable enhancment of the value of the object.

t. The restitutor shall not be entitled to benefits of the excions of paragraph 1 if he had acquired the object way of an aggravated confiscation within the meaning that the Row or should have known under the commistences at the time the fundamental changes were had to that the object at any time had been obtained by way of an aggravated confiscation.

Where the restitutor has combined the object subject in restitution with another object as an essential part thereof, he may separate the latter object and appropriate it. In this time, he shall restore the object to its former condition at his own expense Where the claimant obtained possession if the combined objects prior to the separation he shall be required to permit the separation; he may, however,

#### ARTHEEL, 22

# Durchführung des Grundsatzes des Artikels 22

Die Wiedergutmachungskammer hat, soweit die Ansprüche des Berechtigten auf Grund der Artikel 20 ff. nicht zu einer im Sinne des Artibels 22 ausreichenden Wiederautmachung führen, alle Maßnahmen zu treffen, die notwendig und geeignet sind, die dem Bereentigten in Artikel 22 eingegannten Reelde zu verwirklichen. Sie hat zu diesem Zweck insbesondere nötigenfalls die Einziehung und Neugusgabe oder den Austausch von Aktien, Anteilscheinen, Zwischenscheinen und sonstigen Beteiligungspapieren oder die Begründung eines Gesellschaftsverhältnisses zwischen dem Berechtigten und dem in Artikel 22 bezeichneten Unternehmen sowie die Vornahme der zur Verwirklichung der Rechte gesetzlich vorgeschriebenen Handlungen anzuordnen, Diese Maßnahmen haben grundsätzlich zu Lasten derjenigen zu erfolgen, die bei entsprechender Anwendung der Vorsebriften dieses Gesetzes rückerstattungspflichtig erscheinen. Lasten sonstiger Anteilsberechtigter an dem Unternehmen sollen solche Maßnahmen nur insoweit angeordnet werden, als diese Anteilsberechtigten aus der Entziebung in Verbindung mit dem in Artikel 22 bezeichneten Sachverhalt mittelbar oder unmittelbar Natzen gezogen haben oder das Unternehmen selbst auf Grund von Verschriften dieses Geseizes oder des bürgerlichen Rechts dem Berechtigten zur Herausgabe oder zum Schadensersatz verpflichtet ist, insbesondere für ein Handeln seiner Organe einzustehen hat.

# ARTIKEL 24

# Sonstige Unternehmen

Die Bestimmungen der Artikel 22, 23 finden entsprechende Anwendung, wenn eine Einzelfirma oder die Beteiligung an einer Okenen Handelsgesellschaft oder Kommanditgesellschaft oder die persönliche Beteiligung an einer Kommanditgesellschaft auf Aktien oder der Anteil an einer Gesellschaft mit beschränkter Haftung oder an einer Genossenschaft oder Anteile ähnlicher rechtlicher Art Gegenstand der Entziehung gewesen sind.

# ARTHEEL 25

# Zustellung

Scweit in den Fällen der Artikel 22 bis 24 eine Zustellung an unbekonnte Gesellschafter oder an Cesellschafter, deren gegenwärtige Adresse unbekannt ist, nowendig wird, erfolgt dieselbe durch öffentliche Zustellung gemäß Artikel (1.

# ARTIGEL 20

# Ersatzleistung bei Veränderung einer Sache

1. Würe eine Sache zurückzuerste A, die nach der Entzichung wesentlich verändert worden ist und dadurch eine erhebliche Weitsteigerung erfahren hat, so kann die Wiedergutmachungskommer unter Berücksichtigung der berechtigten Interessen der Beteiligten eine nach dem Wert der Sache zur Zeit der Entzichung angemessene Ersatzleistung an Stelle der Rückerstattung anordnen. Der Berechtigte kann jedoch die Einräumung von Miteigentum zu angemessenem Bruchteil verlangen, es sei denn, daß der Rückerstattungspflichtige sich zur Ersatzleistung dereh Übertragung ähnlicher gleichwertiger Vermögensgegenstände erbietet. Die Bestimmungen der Sätze 1 und 2 gelten zu Gunsten des Berechtigten auch dann, wenn durch die wesentliche Veränderung der Sache eine erhebliche Wertsteigerung nicht eingetreten ist.

2. Der Rückerstattumspflichtige kann sich auf die Pesihmungen des Absatz I nicht berufen, wenn er die Sache mittels einer schweren Entzichung im Sinne des Artikels 30 erlangt hat oder im Zeitpunkt der Vornahme der wesentlichen Veränderung wußte oder den Umständen nach annehmen mußte, daß die Sache zu irgendeiner Zeit durch eine schwere Entziehung erlangt worden war.

3. Hat der Rückerstattungspflichtige mit der zurückzuerstattenden Sache eine andere Sache als wesentlichen Bestandteil verbunden, so kann er sie abtrennen und sich aneignen. Er hat im Falle der Wegnahme die Sache auf seine Kosten in den vorigen Stand zu tzen. Erlangt der erechtigte den Besitz der Sache, so hat er verpflichtet, die oftrennnung zu gestatten; er kann der Gestattung ver-

withhold his consent unless security is given to sevo him ! Larraless from any damage resulting from the separation. The restitutor shall not have the privilege of separation if he is not entitled to compensation for expenditures necording to the provisions of this Law; or if he is indemnified at Fast for the value which the separable part of the object would have to him after sep cation.

4. In determining whether preparty has been enhanced in value within the meaning of para, raph 1, sentence 1, only such enhancement in value for which the restitutor may chara compensation under the provisions of this Law shall be taken into account.

# ARTICLE 27

# Restitution of an Angregate of Properties

1. The claimant may not limit his demand for restitution to separate items out of an aggregate of properties if the aggregate can be returned as a whole and if the limitation of the restitution to separate items would ineq-

uitably prejudice the restitutor or the creditors.

2. The claimant may refuse to include in his petition any claim against a public agency falling within the scope of Article 1 of the Laws on Judicial Aid for the Equitable Settlement of Contracts, as uniformily enacted, with the consent of the Lacaderrat, in Bavaria, Hesse, and Wuerttemberg-Boden, where such claims are among the assets of a commercial enterprise or of any other aggregate of property subject to restitution.

#### ARTICLE 28

# Protection of Debtors

Until notified of the filing of the petition for restitution, the debtor of a confiscated claim may discharge his obligation by payment to the restitutor. The same rule shall apply in favor of a debter who prior to the entry in the Land Title Register (Grundbuch) of an objection to its correctness or a notice of restitution makes a payment to a restitutor entered in the Land Title Register.

# PART V

# COMPENSATION AND ANCILLARY CLAIMS

# ARTICLE 29

# Subregation

- 1. Upon request of the claimant, a former holder of confiscated property who would be liable to restitution if he were still holding it shall turn over any compensation or arrigh any claim for indemnification which he might have acquired in connection with the event preventing the return of such property. Whatever the claimant receives from one of several restitutors shall be credited against the claims he holds against the remaining ones.
- 2. The same shall apply with respect to any compensation or any claim for compensation which the holder or former holder of confiscated property acquired in connection with deterioration of such property.
- 3. In case of the confiscation of a business enterprise the claim for restitution shall extend to the assets acquired after the confiscation, unless the restitutor shows that such assets were not poid for with funds of the enterprise. If the parchase was paid for out of the funds of the enterprise, a corresponding increase in the value of the business shall be deemed to constitute profits within the meaning of Articles 30, 52, and 33. The rule shall be applicable also to try other appregate of property. If the purchase was not ande with funds of the enterprise the restitutor shall have the providere of separation as set forth in Article 26, pararieph 3, provided, however, that the claimant shall have me privilege of taking over the property pursuant to Article

weigern, bis thm für den mit der Abtrennung verbundenen Schaden Sicherheit geleistet wird. Das Recht zur Ab-trennung ist ausgeschlossen, wenn der Ruckerstattungspitichtige nach den Bestimmungen dieses Gesetzes für die Verwendung Ersatz nicht verlangen kann oder ihm mindeatens der Wert ersetzt wird, den der Bestandieil nach der

4. Bei der Bestimmung, ob ein Vermögeusgegenstand eine Wertsteigerung im Sinne des Abratz 1, Satz 1 erfahren hat, Wertsteigerungen, für die der Rückerstattungs pflichtige nach Maßgabe der Bestimmungen dieses Gesetzes keinen Ersatz verlangen kann, zu Gunsten des Ruck-erstattungspflichtigen nicht berücksichtigt werden.

#### ARTHEFT, 27

# Rückerstattung eines Inbegriffs von Gegenständen

1. Der Berechtigte kann die Rückerstattung einzelner Vermögensgegenstände aus einem entzogenen Inbegriff von Gegenständen nicht verlangen, wenn der Inbegriff zurückerstattet werden kann und die Beschränkung der Rackerstattung auf einzelne Vermögensgegenstände zu einer unbilligen Schädigung des Rückerstattungsptlichtigen oder der Gläubiger führen würde.

2. Befinden sich unter den Aktiven eines zurückzuerstattenden geschäftlichen Unternehmens oder sonstigen Vermögensinbegriffs Forderungen gegen die öffentliche Hand im Sinne des Artikels 1 der mit Zustimmung des Länderrats einheitlich in den Ländern Bayern, Hessen und Württemberg-Baden erlassenen Vertragshilfegesetze, so ist der Berechtigte befugt, deren Obernahme abzulehnen.

# ARTHUEL 28

# Schuldnerschutz

Ist eine Forderung entzogen worden, so kann der Schuld-ner mit befreiender Wirkung an den Rückerstattungspilichtigen leisten, bis ihm die Anmeldung des Rückerstattungsanspruchs bekanntgegeben wird. Das gleiche gilt für denjenigen, der bis zur Eintragung des Rückerstattungsvermerks oder eines Widerspruchs gegen die Richtigkeit des Grundbuchs an einen im Grundbuch eingetragenen Rückerstattungspflichtigen leistet.

# FÜNFTER ABSCHNITT ERSATZ- UND NEBENANSPRUCHE

# ARTIKEL, 29

# Ersatz

1. Ein früherer Inhaber des entzogenen Vermögensgegenstandes, der rückerstattungspflichtig sein würde, wenn er noch Inhaber wäre, hat auf Verlangen des Berechtigten den Ersatz herauszugeben oder den Ersatzanspruch abzutreten, den er infolge des die Rückerstattung unmöglich machenden Umstandes erlangt hat. Der Berechtigte muß sich das, was er von einem von mehreren Verpflichteten erlangt hat, auf seine Ansprüche gegen die übrigen Verpflichteten anrechnen lassen.

2. Das gleiche gilt hinsichtlich des Ersatzes oder Ersatzanspruches, den der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes für eine Verschlechterung

desseiben erlangt hat.

3. Im Falle der Entziehung eines geschäftlichen Unter-nehmens erstreckt sich der Rückerstattungsanspruch auch auf die nach der Entziehung für das Unternehmen neu beschafften Vermögensgegenstände, es sei denn, daß der Rückerstattungsplitchtige nachweist, daß die Neubeschaftung nicht mit Mitteln des Unternehmens erfolgt ist. Ist die Neubeschaffung von Vermögenstegenständen mit Mitteln des Unternehmens erfolgt, so gilt eine dadurch eingetretene Steigerung des Wertes des Unternehmens gegenüber den Zeitpunkt der Entziehung als Nutzung im Sinne der Artik-30, 32, 33. Die Bestimmungen gelten entsprechend für eina sonstigen Inbegriff von Vermögensgegenständen. Soweit de Beschaffung nicht mit Mitteln des Unternehmens erfolgt ist. steht dem Rückerstattungspillichtigen das Recht zur Abtrennung nach Artikel 26, Absatz 3 zu mit der Maßgabe, d.J der Berechtigte das Übernahmerecht des Artikels 26, Absatt

Abtreunung für ihn haben würde.

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2. 5 amou the p adequ shall proper involv or ne income Durch. taken be app 26, paragraph 3, third sentence only if otherwise the operation of the enterprise would be hampered considerably.

4. Any claims of the claimant pursuant to Article 30 et seq. which are more extensive shall remain unaffected.

# ARTICLE 30 Strict Liability

1. Any person who has obtained the confiscated property from the persecuted person through a trensaction central bonos mores of as the result of threats made by him or on his behalf, or by an uniawful taking or other tort (hereinstructured to as aggravated composition), shall be hable thater the general thics of the Civil Code governing the habitational for district arising from faintie to return such perpetty on the ground of impossibility or from deterioration and also for suffender of profits and for any other indemningation provided therein.

2. The possessor of former possessor of confiscated property shall be subject to the same flability if he knew of should have known under the circumstances (within the meaning of Section 259 of the Penal Code) at the time he acquired the property that it had been obtained at any time by way of an aggravated confiscation.

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3. If the claimant is entitled to profits he may demand that they be computed on the basis of the usual rate of profits for that particular type of property, such rate to be specified by an implementing regulation, unless it is manifest in an individual case that these standard rules are substantially inappropriate.

# ARTICLE 31

# . Mitigated Liability

1. Any holder or former holder of confiscated property who acquired the property by means of a confiscation not constituting an aggravated confiscation within the meaning of Article 20, paragraph 1, thereinafter referred to as simple confiscation) shall be liable in damages if he is unable to return the property or if it has deteriorated, unless he can prove that he has exercised due diligence.

2. Any holder or former holder shall be similarly liable from the time when he knew, or should have known under the circumstances, that the property at any time had been obtained by way of a confiscation within the meaning of this Law.

3. Where real property or any interest in the nature of real property has been confiscated, a possessor or former possessor shall be liable according to paragraph 1, unless he shows that because of unusual circumstances he neither knew, nor should have known under the circumstances that the property at any time had been obtained by way of contiscation within the meaning of this Law.

# ARTICLE 32

# Return of Profits in Case of Simple Confiscation

1. Any holder or former holder of confiscated property who at any time obtained such property by way of a simple confiscation shall pay the claimant adequate compensation for the period of time in which such holder enjoyed the profits of the property. Article 31, 1 ragraphs 2 and 3, shall be applicable.

be applicable.

2. The amount of the net profits of the property less the amount of an adequate remuneration for management of the property by the restitutor shall be deemed to be an adequate compensation. The remuneration for management shall not exceed 50% of the net profits drawn from the property, except where relatively small amounts are involved. Profits which the restitutor willfully diminished or neglected to draw shall be added. Taxes paid on the net means drawn from the property and the interest on the purchase price paid by the restitutor shall adequately be taken into consideration. Paragraph 3 of Article 30 shall be applicable.

3. Satz 3 nur dann geltend machen kann, wenn ohne dieses Recht der Betrieb des Unternehmens besonders beeintrach-

tigt wurde.

4. Weitergehende Ansprüche des Berechtigten auf Grund der Artikel 30 ff. bleiben unberuhrt.

# ARTIKEL 30

# Strenge Haitung

1. Wer den entzogenen Vermögensgegenstand von dem Verfolgten unttels eines gegen die guten Sitten verstoßenden Reentsgesenatts oder duren eine von ihm oder zu seinen Gunsten aufgeubte Dronung oder duren widerrechtnene Wegnalime oder sonstige unerlaubte Handlung in agt hat (sehwere Entziehung), naffet auf Schadensersatz legen Unmognenkeit der Herausgabe oder Verschiechterung des entziehung von Vermögensgegenstandes, auf Herausgabe von Nutzungen und auf sonstigen Schadensersatz nach den allgemenen Vorschriften des burgeriichen Rechts uber den Schadensersatz wegen unerlaubter Handlung.

2. Ebenso hattet ein Inhaber oder früherer Inhaber des entzegenen Vermogensgegenstandes, der bei dem Erwerbdesseinen wunte oder den Umstanden nach annehmen mußte (§ 259 des KSIGIB), das dieser zu irgendemer Zeit durch eine schwere Entziehung erlangt worden war.

3. Soweit ein Anspruch auf Herausgabe von Nutzung bestemt, kann der Berechtigte verlangen, daß für deten Berechtung ein durch Austumrungsverschriften zu bestimmender, für derartige Vermogensgegenstände üblicher Nutzungssatz zugrundegeiegt wird, solern mehr diese Richtsatze im Einzeital oftenbar in erheblichem Maße unangemesen sind.

# ARTIKEL 31

# Gemilderte Haftung

1. Auf Schadensersatz wegen Unmöglichkeit der Herausgabe- oder Verschiechterung des entzogenen Vermögensgegenstandes haltet auch der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes, welcher diesen durch eine nicht den Tatbestund des Artikels 30, Absatz 1 erfüllende Entziehung (einfache Entziehung) erworben hat, es sei denn, daß er nachweist, daß er die im Verkehr erforderliche Sorgialt angewendet hat.

2. Ebense haftet der Inhaber oder ein früherer Inhaber von dem Zeitpunkt an, von dem er weiß oder den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit durch eine Entziehung im Sinne dieses Gesetzes erlangt worden ist.

3. Im Falle der Entzichung eines Grundstücks oder grundstücksgleichen Rechtes haftet der Inhaber oder ein früherer Inhaber nach Absatz I, sofern er nicht nachweist, daß er infolge besonderer Umstände weder wußte, noch den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit derch eine Entzichung im Sinne dieses Gesetzes erlangt worden ist.

# ARTIKEL 32

# Herausgabe von Nutzungen bei einfacher Entziehung

1. Der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes, welcher diesen zu irgendeiner Zeit durch eine eintache Entziehung erlangt hat, hat für die Zeit, in der er Nutzungen des Vermögensgegenstandes gezogen hat, dem Berechtigten eine angemessene Vergütung zu entrichten. Die Bestimmungen des Artikels 31, Absatz 2 und 3 gelten entsprechend.

2. Als angemessen gilt der Betrag der gezogenen teinen Nutzungen, abzüglich eines angemessenen Entgeltes für die Geschäftsführung des Verpflichteten. Das Entgeit für die Geschäftsführung soll 50% der gezogenen Reinnutzungen eicht übersteigen, es sei denn, daß es sich um kleinere tentige handelt. Nutzungen, die der Verpflichtete böswillig nicht gezogen oder vermindert hat, sind hinzutzurechnen. Die aus dem Reinertrag des Vernögensgegenstandes entrichteten Steuern und die Vertinsung der vom Verpflichteten für den Erwerb des Vermögensgegenstandes entrichteten Entgelts sind angemessen zu berücksichtigen. Artikel 30, Absatz 3 gilt entsprechend.

# Release from Liability

1. A holder or former holder of confiscated property shall not be liable in damages if he is unable to return the property or because the property has deteriorated, nor shall be be liable to account for protits, as long as he neither knew, nor should have known under the circumstances, that the property of any time had been obtained by way of confiscation. The provisions of Article 31, paragraph 3, shall remain undicted.

2. Profits which under rules of good husbandry are not to be regarded as income from such property shall be returned in any event, pursuant to the rules of the Civil Code on unjust enrichment.

3. Under no circumstances shall remuneration for management be paid for a period for which the claimant cannot claim an accounting for profits.

#### ARTICLE 34

# Compensation for Expenditures

1. Ordinary expenses for the maintenance of property subject to restitution shall not be refunded; they may, however, be taken into consideration in determining the net profits under Articles 30 an

2. For other necessary expraod ures compensation may be demanded to the extent in such expenditures should not have been written off in the course of proper management of the confiscated property.

3. For other than necessary expenditures the restitutor may demand compensation only to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property and only to the extent to which the value of the property is still enhanced by such expenditures at the fine of the restitution. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The exercise of the claimant's privileges of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

4. A person who at any time obtained the confiscated property by way of an aggravated confiscation may demand compensation only for necessary expenditures under the conditions set forth in paragraph 2 hereof and under the further condition that such expenditures were in the claimant's interest. The same rule shall apply to any holder or former holder of the confiscated property from the time when he knew, or should have known under the circumstances, that the property at any time has been obtained by way of an aggravated confiscation.

5. Where the provision of Article 26, paraggraph 1, are found to be applicable, no compensation can be claimed for any expenditures which resulted in a fundamental change substantially enhancing the value of the property within the meaning of Article 26, paragraph 1.

#### ARTICLE 35

## Daty to Farnish Particulars

The parties shall be liable to furnish particulars, where such information is necessary to effectuate claims under this Law. Sections 259 to 261 of the Civil Code shall be applicable.

#### ARTICLE 36

#### Title to Increase

The provisions of the Civil Code shall be applicable to the acquisition of title to the produce and other increase of confiscated property. Where the possessor or former possessor did not obtain the property by way of an aggravated confiscation, he shall be deemed to be the owner of the produce and other increase of the confiscated property, without prejudice, however, to his obligation to return any prolits.

#### ARTHUEL 33

# . Haftungsansschluß

1. Der lababer oder ein früherer Inhaber eines entzogenen Vermögenegerenstandes ist zum Schällensersatz wegen Unmöglichkeit der Herausgabe oder wegen Verschlechterung des entzogenen Vermögensgegenstandes und zur Vergutung gezogener Nutzungen für die Zeit nicht verpflichtet, wahrend der er weder wußte noch den Umständen nach anneimen mußle, daß der Gegenstand zu irgendeiner Zeit durch eine Entziehung erlangt worden ist. Die Bestimmung des Ar-tikels 31, Absatz 3 bleibt unberührt.

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2. Nutzungen, die nach den Regeln einer ordnungsmäßigen Wirtsehatt nicht als Ertrag der Sache anzusehen sind, sind in Jedem Falle nach den Vorschriften des Bürgerlichen G. setzbuches über die Herausgabe einer ungerechtfertigten Be-

reicherung herauszugeben.

3. Für einen Zeitraum, für welchen der Berechtigte beine Nutzungen beamspruchen kann, wird ein Entgelt für Geschäftsfohrung in keinem Falle gewährt.

#### ARTHSEL 31

# Verwendungsansprüche

1. Gewöhnliche Erhaltung kosten für den zurückzuerstag tenden Vermögensgegenstand sind unbeschadet ihrer Berücksichtigung bei Ermittlung der Reinnutzungen nach Artikel 30 und 32 nicht zu ersetzen.

2. Für sonstige notwendige Verwendungen Fann Ersatz insoweit verlangt werden, als sie bei ordnungsnäßiger Bewirtschaftung des entzogenen Vermögensgegenstandes noch nicht

als abgeschrieben zu gelten haben.

3. Für andere als notwendige Verwendungen kann der Rückerstattungspflichtige Ersatz nur insoweit verlangen, als sie bei ordnungsmäßiger Bewirtschaftung des entzogenen Vermögensgegenstandes noch nicht als abgeschrieben zu gelten haben und durch die Verwendungen der Wert der Sache noch zur Zeit der Rückerstattung erhöht ist. Die Haltung des Berechtigten beschränkt sich in diesem Falle auf den zurückerstatteten Vermögensgegenstand und die sonstigen ihm aus der Rückerstatiung zustehenden Ansetiele. Für die Geltendmachung der Haftungsbeschränkung finden die Vorschriften der §§ 1990, 1991 BGB entspacchende Auwendung.

4. Wer den entzogenen Vermögensgegenstand zu irgendeiner Zeit mittels einer schweren Entziehung erlangt hat, kann Ersatz nur für notwendige Verwendungen unter den Voraussetzungen des Absatz 2 und unter der weiteren Voraussetzung verlangen, daß die Verwendungen dem Interesse des Berechtigten entsprachen. Dasselbe gilt für den Inhaber oder einen früheren Inhaber des entzogenen Vermögensgegenstandes von dem Zeitpunkt an, von dem er wußte oder den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit mittels einer schweren Entziehung erlangt worden war.

5. Für Verwendungen, die zu einer wesentlichen Ver-änderung und dadurch zu einer erheblichen Wertsteigerung einer Sache im Sinne des Artikels 26, Absatz 1 gefünrt haben, kann kein Ersatz verlangt werden, wenn die Bestimmungen des Artikels 26, Absatz 1 Anwendung finden.

# ARTIKEL 35

## Auskunftspflicht

Soweit es zur Geltendmachung von Ansprüchen auf Grund dieses Gesetzes notwendig ist, sind die Beteiligten einander zur Auskunftserteilung verpflichtet. Die Bestim-mungen der §§ 259–261 BGB finden entsprechende Anwendung.

# ARTIKEL 36

# Eigentumserwerb an Früchten

Für den Erwerb des Eigentums an Erzeugnissen und sonstigen zu den Früchten der entzogenen Sache gehorenden Bestandteilen gelten die Bestimmungen des Bürgerlichen Hat ein Besitzer oder früherer Besitzer die Gesetzbuches. Sache auf andere Weise als mittels einer schweren Entziehung erlangt, so gilt er unbeschadet seiner Verpflichtung zur Herausgabe von gezogenen Nutzungen als Eigentümet der Erzeugnisse und sonstiger zu den Früchten der entzogenen Sache gehörenden Bestandteile.

#### PART VI

# CONTINUED EXISTENCE OF INTERESTS AND LIABILITY FOR DEBTS

#### ARTICLE 37

#### Continued Existence of Interests

1. Any interest in the confiscated property well continue to be effective to the extent to which it can ed prior to the act constituting the confiscation, and insofar as it has not been extinguished or discharmed thereafter. The same shall apply to any interest created at a later date to the extent to which the total amount of all claims (principal and accessory claims) does not exceed the total amount of all such claims as they existed prior to the act constituting the confiscation (hereinafter referred to as limit of encumbrances). An interest which does not involve payment of money shall continue to be effective only where an interest of the same kind already existed prior to the confiscation and the interest subsequently created is not more burdensome, than that existing at the time of the confiscation, or where such interest would have come into existence even though the property had not been confiscated.

2. The limit of encumbrances shall be raised to the extent to which any interest of a third person results from expenditures for which the restituor may claim compensation pursuant to Article 24. Any other interest of a third person which exceeds the limit of encumbrances set forth in paragraph 1 of this Article and which results from expenditures for which the restitutor cannot claim compensation pursuant to Article 34 shall be extinguished, unless at the time of the restitution the value of the object is still increased correspondingly as the result of the expenditure and the third person shows that he neither knew, nor should have known under the circumstances that the property had been obtained by way of an aggravated confiscation.

3. Interests in the property subject to restitution which, in connection with the confiscation, had been created in favor of the claimant or his predecessor in interest shall centinue to be effective irrespective of the limit of encumprances. This shall be without prejudice to any claim of the claimant for the restitution of such interests in case they had been confiscated.

4. Interests resulting from the conversion of the Home-Rent Tax, with the exception of overdue payments, shall continue to be effective irrespective of the limit of arcumbrances

#### ARTICLE 38

#### Devolving of Encumbrances

If real property has been encumbered by any transaction, legal act, or any governmental act constituting a confiscation within the meaning of this Law, such an encumbrance shall devolve on the claimant and shall not be considered in computing the limit of cacumbrances as provided in Article 37. This shall apply particularly to encumbrances which were entered in the Land Title Register (Grundbuch) in connection with the Capital Flight Tax, the Property Tax on Jews and similar enactments.

#### ARTICLE 39 Personal Liability

If, prior to the confiscation of real property, the claimant or his predecessor in interest was personally liable in respect 12 any debt which was secured by a mortgage, land charge (Grundschuld) or annuity charge (Rentenschuld) on the real property, he shall assume personal liability at the time of terovery of title to the extent to which the mortgage, land tharge or annuity charge continues to be effective under the preceding provisions. The same shall apply in case of obligations in regard to which the restitutor may demand to be teleased pursuant to Article 34 of this Law and Section 257 of the Civil Code. The same shall apply also in the case of liabilities which continue to be effective according to Article 37, paragraph 1, second sentence, and which replace tharges for which the claimant or his predecessor in Interest had been personally liable.

## SECHSTER ABSCHNITT

# FORTBESTAND VON RECHTEN UND HAFTUNG FÜR VERBINDLICHKEITEN

#### ARTIKEL 37

#### Fortbestand von Rechten

1. Rechte an dem entzogenen Vermögensgegenstand bielben bestehen, soweit sie bestanden haben, bevor die die Entziehung darstellende Handlung vergenommen worden ist, und sie seither nicht getilgt oder abgelöst worden sind. Das Gleiche gilt für später entstandene Rechte, soweit die Gesamtsumme aller Haupt- und Nebenforderungen nicht bestehenist als die Gesamtsumme aller Haupt- und Nebenforderungen, die bestanden haben, bevor die Entziehung vorgenommen worden ist (Belastungsgrenze). Rechte, die nicht auf Zahlung von Geld gerichtet sind, bleiben nur dann bestehen, wenn gleichartige Rechte vor der Entziehung bereits bestanden haben und die später entstandenen Rechte nicht lästiger sind als die zur Zeit der Entziehung bestehenden Rechte, oder wenn die Rechte auch ohne die Entziehung entstanden wären.

2. Die Belastungsgrenze erhöht sich, soweit Rechte Dritter aus Verwendungen herrühren, für die der Rückerstattungspflichtige gemäß Artikel 31 Ersatz verlangen kann. Sonstige die Belastungsgrenze des Absatz 1 übersteigende Rechte Dritter, die aus Verwendungen herrühren, für die der Rückerstattungspflichtige gemäß Artikel 34 Ersatz nicht verlangen kann, erlöschen, es sei denn, daß der Wert der Sache zur Zeit der Rückerstattung durch die Verwerdung noch entsprechend erhöht ist und der Dritte nachweist, daß er weder wußte noch den Umständen nach annehmen zuußte, daß die Sache mittels einer schweren Entziehung erlangt war.

3. Rechte, die für den Berechtigten oder seinen Rechtsvorgänger an dem zurückzuerstattenden Vermögensgegenstand anläßlich der Entzichung begründet waren, bleiben ohne Rücksicht auf die Belastungsgrenze bestehen. Ansprüche des Berechtigten auf Rückerstattung derartiger Rechte, soweit sie ihm entzogen worden sind, bleiben unberührt.

4. Rechte, die aus der Abgeltung der Hauszinssteuer herrühren, mit Ausnahme des Rechtes auf rückständige Leistungen, bleiben ohne Rücksicht auf die Belastungsgrenze unberührt.

## ARTIKEL 38

## Ubergang von Rechten

Wenn ein Grundstück durch ein eine Entziehung im Sinne dieses Gesetzes darstellendes Rechtsgeschäft, Rechtshandlung oder Staatsakt belastet worden ist, so geht das Recht aus einer solchen Belastung auf den Berechtigten über und ist bei Berechnung der in Artikel 37 vorgesehenen Belastungsgrenze nicht zu berücksichtigen. Dies gilt insbesondere für Rechte, die im Zusammenhang mit der Reichsfluchtsteuer, Judenvermögensabgabe und ähnlichen Maßnahmen im Grundbuch eingetragen sind.

# ARTIKEL 39

#### Schuldübernahme

Soweit der Berechtigte oder sein Rechtsvorgänger vor der Entziehung eines Grundstücks persönlicher Schuldner einer Forderung war, für die an dem Grundstück eine Hypothek, Grundschuld oder Rentenschuld bestellt worden war, übernimmt der Berechtigte mit der Wiedererlangung des Eipentums die persönliche Schuld, insoweit als die Hypothek, Grundschuld oder Rentenschuld nach den vorstehenden Bestimmungen bestehen bleibt. Das gleiche gilt, soweit es sich um Verbindlichkeiten Landelt, bezüglich deren der Rückerstattungsplichtige Befreiung gemäß Artikel 34 dieses Gesetzes, § 257 BGB. verlangen kann. Das gleiche gilt ferner bei Verbindlichkeiten, die nach Artikel 37, Absatz 1, Satz 2 bestehen bleiben und an Stelle von Verbindlichkeiten getreten sind, für die der Berechtigte oder sein Rechtsvorgänger persönlicher Schuldner gewesen war.

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#### ARTICLE: 40

# Demand for Assignment

1. The claimant may demand the assignment to him, without compensation, of any mortgage, land charge or annuity charge against real property subject to restitution which is held by any holder or former holder of such property who at any time obtained the properly by way of an aggravated configuration. This shall not apply to the personal debt on which the mortgage is based. Any interest created prior to the confiscation shall be subject to the provisions of Article 46, paragraph 3

2. The provisions of this Article shall not apply to encumbrances created pursuant to the provisions of this Law.

## ARTICLE 41

# Liability for Debts of a Pusiness Enterprise

1. If the claimant recovers a business enterprise or another aggregate of properties, the creditors holding debts incurred in the operation of the enterprise or obligations with which the aggregate of properties has been encumbered may, from the time of the recovery, also assert against the claimant such claims as existed at such time.

2. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which be is entitled under this Law. The claimant's privilege of limiting his liability shall be governed by

Sections 1900 and 1991 of the Civil Code.

3. The claimant shall not be liable under paragraphs 1 and 2 to the extent to which the total amount of liabilities exceeds the limit of encumbrances to be computed in an analogous application of Article 37, and insofar as the excess in the amount of liabilities is no exerced by an excess of assets resulting from the application of Article 29, paragraph 3. In such case the Restitution Chamber, in its equitable discretion, shall take the requisite measures in analogous application of Article 37. Debts held by creditors who neither knew nor should have known under the circumstances that the business enterprise or other aggregate of properties at any time had been obtained by way of confiscation within the meaning of this Law shall have preference. Liabilities of equal priority shall be reduced pro rata, if necessary.

# ARTICLE 42

# Leases

1. If a restitutor or any former possessor has leased real property to a third person, the claimant may terminate the lease by giving notice, the termination to become effective on the date prescribed by Law. Such notice cannot be given until the Restitution Authority has determined that the property is subject to restitution, and such determination is no longer subject to appeal, or until the fact that the property is subject to restitution has been acknowledged in any other way. The notice must be given within three months from such date, or from the date when the claimant in fact tales possession of the real property, if he takes possession at a later date.

2. The provisions of the Law for the Protection of Tenants (Micterschutzgesetz) in the version of 15 December 1942 (RGBl. I, page 712) shall not apply to any restitutor or his predecessor in interest who obtained the property subject to restitution by way of an aggravated confiscation or who, at the time he acquired the property, knew, or should have known under the ciccumstances, that the propcrty at any time had been obtained by way of an aggravated location. The provisions of the Law for the Protection of Tepants shall also not apply insofar as the claimant is in need of adequate dwelling space for himself or his close relatives. Similarly, the Law for the Protection of Tenants shall not apply if dwelling space, which at the time of the

## ARTIKEL 40

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# **Ubertragungsanspruch**

1. Der Berechtigte kann verlangen, daß ihm eine an dem zurückzuerstattenden Grundstück eingetragene Hypothek, Grundschuld oder Rentenschuld, die einem Besitzer oder früheren Besttzer des Grundstücks zusteht, der dieses zu irgendelner Zelt mittels einer schweren Entzichung erlangt hatte, entschädigungslos fibertragen wird. Dies gilt nicht bezüglich der der Hypothek zugrundeliegenden persönlichen Forderung. Bel Rechten, die vor der Entziehung begründet worden waren, findet Artikel 46, Absatz 3 entsprechende Anwendung.

2. Absatz 1 findet keine Anwendurg auf Belastungen, die gemäß den Vorschriften dieses Gesetzes einzutragen sind

#### ARTIKEL 41

# Haftung für Geschäftsverbindlichkeiten

1. Erlangt der Berechtigte ein geschäftliches Unternehmen oder einen sonstigen Vermögensinbegriff zurück, so können die Glaubiger der im Betrieb des Unternehmens begrün-deten oder auf dem sonstigen Vermögensinbegriff lastenden Verbindlichkeiten von dem Zeitpunkt der Wiedererlangung en ihre zu dieser Zeit bestehenden Ausprüche auch gegen den Berechtigten geliend machen.

2. Die Haffung des Berechtigten beschränkt sich auf den zurückerstatteten Vermögensgegenstand und die sonstieen ihm aus der Rückerstattung zustehenden Ansprüche. Für die Geltendmachung der Haftungsbeschränkung finden die Vorschriften der §§ 1990, 1991 BGB, entsprechende Auwen-

3. Die Haftung des Berechtigten gem

ß Absatz 1 und 2 tritt nicht ein, soweit der Gesamtbetrag der Verbindlichkeiten die in entsprechender Anwendung des Artikels 37 zu errechnende Belastungsgrenze übersteigt und der übersteigende Betrag der Verbindlichkeiten auch nicht durch einen nach Artikel 29, Absatz 3 sich ergebenden Mehrbeirag der Aktiven gedeckt erscheint. Die Wiedergutmachungskammer trifft in diesem Falle nach billigem Ermessen die erforderlichen Maßnahmen in sinngemäßer Anwendurg des Ar-tikels 37, Hierbei gehen Verbindlichkeiten, deren Gläubiger beim Erwerb der Forderung weder wußten noch den Unständen nach annehmen mußten, daß das Unternehmen oder der sonstige Vermögensinbegriff zu irgendeiner Zeit durch eine Entziehung im Sinne dieses Gesetzes erlangt worden war, grundsätzlich anderen Verbindlichkeiten vor. gleichrangigen Verbindlichkeiten findet, soweit erforderlich, eine Kürzung nach dem Verhältnis ihrer Befräge statt.

#### ARTITEE, 42

# Miet- und Pachtverhaltnisse

1. Hat der Rückerstattungspatchtige oder ein früherer Besitzer ein Grundstück an oben Dritten vermietet oder vernachtet, so kann der Berechtigte das Miet- oder Pachtverhältnis mit der gesetzlichen Kündigungsfrist kündigen. Die Kündigung ist erst zulässig, wenn die Wiedergut-machungsorgane die Rückerstattungspflicht rechtskräftig festgestellt haben oder diese Pflicht anderweit anerkannt ist. Die Kündigung muß binnen 3 Monaten von diesem Zeitnunkt oder von der tatsächlichen Übernahme des Grundstücks av wenn diese später erfolgt, vorgenommen werden

2. Die Bestimmungen des Mieterschutzgesetzes in der Fassung vom 15. Dezember 1942 (RGBL L S. 712) finden keine Anwendung auf Rückerstattungsoflichtige oder deren Rechtsvorgänger, die den zurückzuerstattenden Vermögensgegenstand durch schwere Entziehung erlangt haben oder beim Erwerb wußten oder den Umständen nach annehmen mußten, daß der Vermögensaggenstand zu Zeit durch eine schwere Entziehung erlangt worden war. Die Bestimmungen des Mieterschutzeesetzes finden ferner keine Anwendung, soweit der Berechtigte Wohnräume für sich oder seine nahen Angehörbten zum angemessenen Wehnen benötigt. Das gleiche gilt, wenn Wohnraum, der im Zeitbunkt der Entziehung oder der Erhebung des Rückerstattungsanspruchs im Zusammenhang mit dem Betrieb eines zurückzuerstattenden geschäftlichen Unternehmens the fraction or of the filing of the petition for restitution was a lin connection with the operation of a business enterprise subject to restitution, is needed for the continued exertation of such enterprise. The provisions of the Law for the Protection of Tenants shall not be applicable to space used for commercial purposes if the claimant has a legitment interest in the immediate return of such space.

3. Leases entered into with the approval of Military (Covernment may be cancelled only with the consent of

Military Government.

# ARTICLE: 43

# Employment Contracts

Irrespective of any contractual prevision to the contrary, the claimant may terminate any existing combownent contract made since the confiscation by the restitutor or any former heider of a business enterprise subject to reditution by giving notice as provided in a collective labor-agreement or in the absence thereof within the statutory period; this shall not prejudice the right of the claimant to terminate an employment contract for just cause without notice. Molies cannot be given until the Restitution Authorities have determined that the enterprise is subject to restitution and such determination is no longer subject to anneal, or until the fact that an enterprise is subject to restitution has been acknowledged in some other way. Such notice must be given within three months from such date, or from the time when the claimant in fact obtains possession of the enterprise, if he obtains possession at a later date.

#### PART VII

# CLAIMS OF THE RESTITUTOR FOR REFUND AND INDEMNIF CATION

## ARTICLE 44

# Obligation to Refund

- 1. In exchange for the restitution of the confiscated preparty the claimant shall refund to the restitutor the consideration received by him, in kind if possible. This amount shall be increased by the amount of any encumbrance main t the confiscated preparty existing at the time of a citication and discharged thereafter, unless such encumbrance has been replaced by another encumbrance which entimies to be effective, and unless the discharged encumbrance was created as the result of a confiscation within the meaning of this Law.
- 2. Where several items of property were confiscated for a consideration consisting of a lump sum, but restitution takes place in regard to some of these items only, the lump sum shall be reduced pro rata, in the ratio which at the time of the confiscation existed between the lump sum and the value of those items to be restituted.
- a, if at the time of the confiscation the claimant, for any of the reasons set forth in Article 1, did not obtain, wildly or in part, the power freely to dispose of the consideration received, the refund shall be diminished by a like amount. The claimant shall assign to the restitutor any claim for indemnification to which he may be entitled with respect to this amount.
- 4. Up or no circumstances shall the claimant be required to refund any amount exceeding the value of the tenfiscated property at the time of restitution, less the value of the encumbrance recognized against the property.

# ARTICLE 45 Equitable Lien

The restitutes shall have no equitable iten (Zurusck-behaltungsrecht) for his claims insofar as such iten would the tantially delay the speedy restitution of the confiscated Property. The same shall apply to any execution or attachment of the confiscated property based on any counterclaim.

benutzt wurde, zur Weiterführung des Unternehmens benötigt wird. Bei Geschäftsräumen sind die Bestimmungen des Mieterschutzgesetzes insoweit nicht anwendbar, als der Berechtigte an deren alsbaldiger Rückgabe ein begründetes Interesse hat.

3. Miet- und Pachtverträge, die mit Genehmigung der Militärregierung abgeschlossen worden sind, können nur mit deren Zustimmung gehündigt werden.

# ARTIKEL 43 Dienstverträge

Der Berechtigte kann laufende Dienstverträge, die der Rückerstattungspflichtige oder ein früherer Inhaber eines zurückzuerstattenden geschäftlichen Unternehmens in diesem nach der Entziehung abgeschlossen hatte, vorbehaltlich eines etwalgen Rechtes auf fristlose Kündigung, ohne Rücksicht auf abweichende Einzel-Vertragsbestimmungen mit der tariflichen oder gesetzlichen Kündigungsfrist kündigen. Die Kündigung ist erst zulässig, wenn die Wiedergutmachungsorgane die Rückerstattungspflicht rechtskräftig festgestellt haben oder diese Pflicht anderweit anerkannt ist. Sie muß binnen 3 Monaten von diesem Zeitpunkt an oder von der tatsächlichen Übernahme des Unternehmens an, wenn diese päter erfolgt, vorgenommen werden.

## SIEBENTER ABSCHNITT

# ANSPRÜCHE DES RÜCKERSTATTUNGS-PFLICHTIGEN AUF RÜCKGEWÄHR UND AUSGLEICH

## ARTIKEL 41

## Rückgewährpflicht

- 1. Der Berechtigte hat dem Rückerstattungspflichtigen fagen Rückerstattung des entzogenen Vermögensagenstandes das erhaltene Entzell, wenn möglich in Natur, herauszugeben. Das Entgelt erhöht sich um den Betrag der vor der Entziehung bestehenden und seither getilgten Belastungen des entzogenen Vermögensagegenstandes, soweit an deren Stelle nicht andere bestehenbleibende Belastungen getreten sind oder die getilgte Belastung nicht selbst auf Grund einer Entziehung im Sinne dieses Gesetzes entstanden ist.
- 2. Findet im Falle der Entziehung mehrerer Vermögensgegenstände gegen ein Gesamtentgelt die Rückerstattung
  nur in Ansehung einzelner Vermögensgegenstäl de statt, so
  ist das Gesamtentgelt in dem Verhältnis herabausstzen, in
  welchem zur Zeit der Entziehung der Vermögensgegenstände
  das Gesamtentgelt zu dem Wert der zurückzu rstattenden
  Vermögensgegenstände stand.
- 3. Hat der Berechtigte bei der Entziehung ganz oder teilweise aus den Gründen des Artikels 1 nicht die freie Verfügung über die Gegenleistung des Erwerbers erlangt, so vernindert sich das Entgelt um diesen Betrag. Der Berechtigte hat einen ihm etwa zustehenden Wiedergutmachungsanspruch dem Rückersiattungspflichtigen abzutreten.
- 4. Der Berechtigte hat in keinem Falle mehr zurückzugewähren, als den Wert des entzogenen Vermögensgegenstandes im Zeitpunkt der Rückerstattung abzüglich des Wertes der bestehenbleibenden Belastungen.

#### ARTIKEL 45

# Zurückbehaltungsrecht

Für Ansprüche des Rückerstattungsnflichtigen kann ein Zurückbehaltungsrecht insoweit nicht geltend gemocht werden, als dies die schleunige Rückerstattung des entzogenen Vermögensgegenstandes erheblich verzögern würde. Das gleiche gilt für Zwangsvollstreckung und Arrestvollziehung auf Grund von Gegenansprüchen in die entzogenen Vermögensgegenstände.

#### ARTICLE 46

## Judicial Determination of Terms of Payment

1. The Restitution Authorities shall determine the terms of payments to be made in connection with restitution, taking into consideration the purpose of the Taw, the debtor's ability to pay, and existing statutory prohibitions and limitations on payments.

2. In cases involving the restitution of real property and interests in the nature of real property, the claimant may demand that an ad-quate period not exceeding ten years be allowed for the payment of the refund and expenditures, provided that a refund-mortage bearing 4% interest be executed on the property in favor of the restitutor. The terms shall be specified by the Restitution Authorities upon application.

3. In cases provided for in Article 34, paragraph 3, and Article 37, paragraph 2, the Restitution Authorities shall determine the maturity dates of debts and the terms of payment in such a way that the restitution of the confiscated property win not be prejudiced under any circumstances nor its enjoyment by the claimant unduly impaired.

#### ARTICLE 47

# Claims for Indemnification

1. Claims for indemnification which the restitutor may have against any of his predecessors in interest shall be governed by the rules of the Civil Law. The liability to make restitution shall be deemed to constitute a defect in title within the meaning of the Civil Code. Section 439, para-

graph 1 of the Civil Code shall not be applicable,

2. In case of restitution of real or tangible personal property, any claim provided in paragraph ' may be asserted not only against the original party to the contract but also against any predecessor in interest who was not in good faith at the time he acquired the property. Such predecessors in interest shall be liable as joint debtors. They shall not be liable, if the restitutor himself was not in good faith.

# ARTICLE 48

# Lien of Third Persons on Claims of the Restitutor

1. Any interest in confiscated property which ceases to be effective pursuant to Article 37 shall remain a lien on any claim which the restitutor may have for payment of expenditures, refund of consideration and for indemnification under Articles 34, 44 and 47; and on the proceeds which the restitutor obtains on the basis of such claims.

2. This provision shall not apply in favor of such persons who by granting loans have aided an aggravated confis-

cation.

#### PART VIII

# GENERAL RULES OF PROCEDURE

## ARTICLE 49

# Basic Principles

1. The restitution proceedings shall be conducted in such a manner as to bring about speedy and complete restitution. The Restitution Authorities may deviate in individual cases from procedural rules declared applicable by this Law, if to do so will serve to accelerate restitution, provided that such deviction does not impair complete investigation of the facts or the legal right to a fair hearing.

· 2. In ascertaining the facts of the case the Restitution Authorities shall bear fully in mind the circumstances in which the channant find; himself as a result of measures of persecution for the reasons set forth in Article 1. This shail particularly apply where the producing of evidence has been rendered difficult or impossible through the loss of

#### ARTIKEL 46

# Gerichtliche Festsetzung für Zahlungen

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1. Die Wiederguimachungsorgane haben die Zahlungs-bedingungen für Geldieistungen, die im Zusammenhang mit der Rückerstattung stehen, unter Berücksichtigung des Zweels des Gesetzes, der Zahlungsfähigkeit des Verpflielteten und bestehender gesetzlicher Zahlungsverbote und Zahlungsbeschränkungen festzusetzen.

2. Der Berechtigte kann im Falle der Rückerstattung von Grundstücken und grundstücksgleichen Iechten verlangen, daß seine Verbindlichbeiten zur Rückgewähr des Entrelts und zum Ersatz von Verwendungen gegen Eintragung einer mit 4 v. H. verzinslichen Rückerstattungshypothek an dem Grundstück zu Gunsten des Rückerstattungspllichtigen ongemessen, jedoch nicht länger als 10 Jahre, gestundet werden-Die näheren Bedingungen bestimmen auf Antrag die Wiedergutmachungsorgane.

3. In den Fällen der Artikel 34, Absatz 3, und 37, Absatz 2, haben die Wiedergutmachungsorgane die Fälligkeit von Verbindlichkeiten und die Zahlungsbedingungen so zu regeln, daß keinesfalls die Rückerstattung des entzogenen Vermögensgegenstandes geführdet oder die Nutzung des Berechtigten an demselben unbillig beeinträchtigt wurd

#### ARTIMEL 47

# Rückgriffsansprüche

1. Die Rückgriffsansprüche des Rückerstattungspflichtigen rogen jeden mittelbaren Rechtsvorgänger bestimmen sich nach den Vorschriften des Bürgerlichen Rechts. Die Rückerstattungspflicht bildet einen Mangel im Recht im Sinndes Bürgerlichen Gesetzbuches. Die Bestimmung des § 439

Absatz 1 BGB findet keine Anwendung.

2. Die nach Absatz 1 zulässigen Ansprüche können im Falle der Herausgabe einer Sache auch gegen jeden Rechtsvorgänger geltend gemacht werden, der beim Erwerb der Sache nicht im guten Glauben gewesen ist. Diese Rechtsvorgänger haften als Gesumtschuldner. Ein Anspruch geger sie ist ausgeschlosssen, wenn auch der Rückerstattungs-pflichtige nicht im guten Glauben war.

# ARTIKEL 48

## Rechte Oritter an den Ansprüchen des Rückerstattungspflichtigen

1. Rechte an dem entzogenen Vermögensgegenstand, die nach Artikel 37 nicht an ihm bestehen bleiben, setzen sich fort zu dem Anspruch des Rückerstattungspllichtigen auf Frsat von Verwendungen, Rückgewähr des Entgelts und zu icht gemäß Artikel 34, 44, 47 und an demjenigen, was des Beiten und dem eines Artikel 34, 44, 47 und an demjenigen, was des Beiten und dem eines d der Rückerstattungspflichtige auf Grund dieser Ansprüche

2. Diese Bestimmung gilt nicht zu Gunsten von Personen, die zu einer schweren Entziehung durch Darlehnsgewährung

Beistand geleistet haben.

# ACHTEL ABSCHNITT

# ALLGEMEINE VERFAHRENSBESTIMMUNGEN

# ARTIKEL 49

#### Grundsatz

 Das Rücherstattungsverfahren soll eine rasche und vollständige Wiedergutmachung herbeiführen. Die Wiedergutmachungsorgane können von Verfahrensvorschriften, die in diesem Gesetz für anwendbar erklärt sind, im Einzelfall abweichen, wenn dies der Beschleunigung der Rückerstat-tung dient und dadurch weder die volle Aufklärung des Sachverbalts noch die Gewährung des rechtlichen Gehörs beeinträchtigt wird.

2. Die Wiedergutmachungsorgane haben die Lage, in die der Berechtigte durch die Verfolgungsmaßnahmen aus den Gründen des Artikels I geraten ist, bei der Ermittlung des Sachverhalts weitzehend 'u berücksichtigen. Dies gilt insberondere, soweit die Beio, agung von Beweismitteln durch

residence abroad of the claimant, or similar circumstances. Affidavits of the claimant and his witnesses shall be admitted. This shall apply even though the affiant died after signing the affidavit.

## ARTICLE 10

# Right of Succession and Foreign Law

- 1. Any person who bases any claim upon a right of succession on death must establish such right.
- 2. Foreign law must be proved so far as it is unknown to the Restitution Authorities.

#### ARTICLE 51

# Presumption of Death

Any persecuted person, whose last known residence was in Germany or a country under the jurisdiction of or occupied by Germany or its Allies and as to whose whereabouts or continued life after 8 May 1915 no information is available. shall be presumed to have died on 8 May 1945; however, if it appears probable that such a person died on a date other than 8 May, the Restitution Authorities may deem such other date to be the date of death.

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## ARTICLE 52

# Safeguarding

- 1. The Restitution Authorities shall, if the situation so requires, safeguard confiscated property in a suitable manner. They may fo that end issue temporary injunctions (einstweilige Verfügung) or restraining orders (Arrest), either upon their own motion or upon application. tions or orders shall be modified or vacated if the property can be safeguard by any other measures than those taken. er if there is no further need for their continuation.
- 2. The provisions of the Code of Civil Procedure on "Artest und einstweilige Verfügung", as ame ided or as hereafter amended, shall be applicable.

# ARTICLE 53

#### Trustee

- 1. Where supervision of the confiscated property is necessary, a trustee shall be appointed provided no other authority exercises jurisdiction over such property.
- 2. Unless provided otherwise by implementing regulation, the rules concerning the Administration of Blocked Property shall apply to the appointment and supervision of a trustee.

## ARTICLE 54

# Jurisdiction of Other Authorities to Take Measures as Set Forth in Articles 52 and 53

Where the safeguarding measures described in Articles 52 and 53 are within the jurisdiction of another agency, the Restitution Authorities will request the appropriate agency to take such measure.

#### PART IX

# FILING OF CLAIMS

# ARTICLE 55

# Central Filing Agency

- 1. A Central Filing Agency for the filing of petitions for restitution will be established under regulations to be sued by Military Government.
- 2. The Central Filling Agency shall transmit the petition " the appropriate Restitution Agency or Agencies.

documents, the death or unavailabilty of witnesses, the Zeugen, Auslandsaufenthalt des Berechtigten und ähnliche Umstände erschwert eder unmöglich geworden ist. Eides-stattliche Versicherungen des Berechtigten und von ihm benannter Zeugen sind zuzulassen. Dies gilt auch dann, wenn die die eiderstattliche Versicherung abgebende Person nach Abgabe der Versicherung verstorben ist.

#### ARTIKEL 50

# Erbrecht und ausländisches Recht

- 1. Wer sich auf eine erbrechtliche Stellung beruft, hat diese nachzuweisen.
- 2. Ausländisches Recht bedarf des Beweises, soweit es den Wiedergutmachungserganen unbekannt ist.

#### ARTHEEL 51

# Tedesvermutung

Wenn ein Verfolgter seinen letzten bekannten Aufenthalt in Deutschland oder in einem von Deutschland oder seinen Allijerten besetzten oder annektierten Gebiet hatte und sein Aufenthalt seit dem 8. Mai 1945 unbekannt ist, ohne daß Nachrichten darüber vorliegen, daß er zu diesem oder einem späteren Zeitnuckt noch gelebt hat, so wird vermutet, 6a9 er am 8. Mai 1945 verstorben ist. Falls nach den Umständen des Einzelfalls ein anderer Zeitpunkt des Todes wahrscheinlich erscheint, so können die Wiedergutmachungsorgene diesen anderen Zeitpunkt als Zeitpunkt des Todes feststellen.

#### ARTIKEL 52

## Sicherungspflicht

- 1. Die Wiedergutmachungsorgane haben entzogene Vermagensaegensstände, wenn ein Bedarfnis besteht, in geeigneter Weise sicherzustellen., Sie können hierzu auf Antrag oder von Amts wegen einstweilige Verfügungen andern oder Arrestbefehle erlassen. Diese sind ebzuändern oder aufzuheben, wenn die Sicherstellung durch andere als die getroffenen Maßnahmen erreicht werden kann, oder das Bedüßeis noch ihren Aufrechtenbehren erreicht. dürfnis nach ihrer Aufrechterhaltung entfällt.
- 2. Die Verschriffen der Zivilprozeße dnung über Arrest und einstweilige Verfügungen sind in der jeweils geltenden Fassung ent prechend anwendbar.

# ARTIKEL 53

# Treuhänder

- 1. In Fällen, in denen für entzogene Vermögensgegenstände eine Fürsorge erfordeilich ist, ist ein Treuhänder zur bestellen, soweit nicht hierfür die Zuständigkeit einer anderen Behörde begründet ist.
- 2. Für die Bestellung und Beaufsichtigung des Treu-händers gelten die Vorschriften über die Verwaltung be-schlagnahmten Vermögens, soweit nicht durch Ausführungs-vorschriften Abweichendes bestimmt wird.

#### ARTIKEL 51

# Zuständigkeit anderer Behörden zu Maßnahmen nach Artikel 52, 53

Soweit zu den in Artikel 52, 53 bezeichneten Sicherungsmaßnahmen andere Behörten zuständig sind, haben die Wiedergutmachungsorgane diese hierum zu ersuchen.

# NEUNTER ABSCHNITT

# ANMELDEVERFAUREN

#### ARTIKEL, 55

# Zentralammeldeamt

- 1. Für die Anmeldung von Rückerstattungsansprüchen wird ein Zentralanmet camt errichtet. Die näheren Eestin-mungen blerüber erläßt die Militärregierung.
- 2. Das Zentralanmeldeamt hat die Anmeldung den zuständigen Wiedergutmachungsbehörden zu übermittelu.

#### ARTICLE 56

#### Form Requirements and Period of Limitation for Filing Claims

1. A petition for restitution pursuant to this Law shall be rubmitted to the Central Filing Assacy in writing on or before 31 December 1943. Details as to the form of filing will be provided in regulations to be issued by Military togethment.

2. The petition shall be substantiated by documents or

affidaviti.

3 The petition may be effectively filed by any one of

reveral co-claimants.

4. Any petition, filed by a person who is not entitled to rectiving of the property, shall be deemed to have been effectively filed in favor of the frue claimant, or where Articles 8, 10 and 11, are applicable, in favor of the successor organizations mentioned therein. The same shall apply to the filing of petition by any such successor organization.

#### ARTICLE: 57

#### Relation to Other Lemedies

Unless otherwise provided in this Law, any claim within the scope of this Law may be prosecuted only under the provisions and within the periods of limitation, set forth in this Law. However, any claim based on tort, outside the scope of this Law, may be prosecuted in the ordinary courts.

#### ARTICLE 58

#### Contents of Petition to be Filed

- 1. The petition shall contain a description of the conficulted property. Time, place and circumstances of the conficultion shall be stated as exactly as is possible under the circumstances. If a claim is made for the payment of money, the sum demanded shall be specified if feasible; the basis for the claim shall be substantiated.
- 2. So far as known to the claimant, the petition shall contain the name and address of the restitutor, the names and addresses of all persons having or claiming to have an interest in the property, lessees and tenants, if any, and a statement as to all encumbrances existing at the time of the confiscation of the property.
- 3. The Central Filing Agency or the Restitution Authorities may request the claimant to supplement his petition by a statement containing the data set forth in paragraphs 1 and 2. They may further require the claimant to swear to his statement.
- 4. If the claim of does not have his domicile or residence is one of the four Zones of Occupation of Germany or in the City of Berlin, and if he has not appointed there an attorney authorized to accept service of legal papers, he may nominate in his petition a person domiciled there, authorized to receive such papers. If he fails to nominate such a person, the Restitution Agency shall do so and notify the claimant of the appointment.
- 5. After a petition has been filed, a receipt shall be fraued by the Central Filing Agency notifing the claimant of the Restitution Agency or Agencies to which the petition has been transmitted pursuant to Article 55, paragraph 2.
- 6. The period of limitation provided for in Article 56, paragraph 1, shall be deemed to have been complied with by the tiling of a written petition with the Central Filing Agency, although it is incomplete or in improper form.

## ARTICLE 59

## Venue

1. Any petition for restitution shall be transmitted by the Central Filing Agency to the Restitution Agency of the district in which the property subject to estitution is located. It is appears that a petition has been transmitted

#### ARTHEEL 56

#### · Form und Frist der Anmeidung

- 1. Rückerstattungsansprüche nach diesem Gesetz sind bis spätestens 31. Dezember 1948 schriftlich bei dem Zentralanmeldcamt anzumelden. Die nüberen Bestimmungen über die Form der Anmeldung erläßt die Militärregierung.
- 2. Der angemeldete Anspruch soll durch Urkunden oder eidesstattliche Versicherungen glaubhaft gemacht werden,
- 3. Die Anmeldung kann rechtswirksam durch einen von mehreren Mitberechtigten erfolgen.
- 4. Die Anmeldung seitens eines vermeintlichen Berechtigten wirkt zu Gunsten des wahren Berechtigten und unter den Voraussetzungen der Artikel 8, 10 und 11 zu Gunsten der dort bezeichneten Nachfolgeorganisationen. Das gleiche gilt für die Anmeldung seitens dieser Nachfolgeorganisationen.

#### ARTHEEL 57

#### Verhältnis zum ordentlichen Rechtsweg

Ansprüche, die unter dieses Gesetz fallen, können, soweit in diesem Gesetz nichts anderes bestimmt ist, nur im Verfahren nach diesem Gesetz und unter Einhaltung seiner Fristen geltend gemacht werden. Ansprüche aus unerlaubier Handlung, die nicht unter die Bestimmungen dieses Gesetzes fallen, können jedoch im ordentlichen Rechtsweg geltend gemacht werden.

#### ARTIKEL 58

#### Inhalt der Anmeldung

- 1. Die Anmeldung muß eine Beschreibung des entzogenen Vermögensgegenstandes enthalten. Zeit, Ort und Umstände der Entzichung sollen, so genau als es den Umständen nach möglich ist, beschrieben werden. Soweit tunlich, sollen Geldansprüche beziffert sein; der Grund des Anspruchs soll dargelegt werden.
- 2. Die Anmeidung soll, soweit dem Berechtigten bekannt. Namen und Anschrift des Rückerstattungspflichugen, Namen und Anschrift aller Personen, die ein Recht an dem Vermögensgegenstand haben oder geltend machen, etwalge Mieter und Pächter und die Angabe der zur Zeit der Entzichung an dem Vermögensgegenstand bestehenden Belastungen enthalten.
- 3. Das Zentralanmeldemnt oder die Wiedergutmachungsorgane können die Ergänzung einer Anmeldung durch die in Absatz 1 und 2 vorgeschenen Angaben von dem Berechtigten verlangen; sie können ihm die eidesstattliche Versicherung seiner Angaben auferlegen.
- 4. Hat der Antragsteller seinen Wohnsitz oder gewöhnlichen Aufenthalt nicht in einer der vier Besatzungszoren Deutschlands oder der Stadt Berlin, und hat er daselbst auch keinen zum Empfang von Zustellungen bevollmächtigten Prozeßvertreter bestellt, so hat er in der Anmeldung einen daselbst wohnhaften Zustellungsbevollmächtigten zu benennen. Benennt er einen Zustellungsbevollmächtigten nicht. 30 hat die Wiedergutmachungsbehörde einen solchen zu bestellen und den Antragsteller hiervon zu benachrichtigen.
- 5. Über die erfolgte Anmeldung ist seitens des Zentralanmeldeamtes eine Bescheinigung zu erfeilen, in der der Berechtigte davon in Kenntnis gesetzt wird, an welche der Wiedergutmachungsbehörden die Anmeldung gemäß Artikel 55, Absatz 2 übermittelt worden ist.
- 6. Die in Artikel 56, Absatz 1 vorgeschene Frist für die Anmeldang eines Rückerstattungsanspruchs gilt als gewehrt, wenn diese schriftlich bei dem Zentralanmeldeamt erfolgt ist, selbst wenn sie unvollständig und nicht in der vorgeschriebenen Form vorgenommen worden ist.

#### ARTIKEL 59

### Ortliche Zuständigkeit

 Das Zentralanmeldennt hat die Anmeldung des R\u00e4cherstattungsansprachs an die Wiedergutmachungsbeh\u00f6rde des Bezirks zu \u00e4berm\u00e4teln, in dem sieh der zur\u00fcekeuerstatten \u00fc Verm\u00f6gensgegenstand be\u00e4ndet. Ergibt sieh die Unzust\u00e4nd\u00e4s Result rerenction 1

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a cau tained or by the 1: within dismi to a Restitution Agency which lacks jurisdiction, such section chait be referred by such Restitution Agency to the return Agency having jurisdiction. The order of reference shall be binding on the Agency to which the petitory has been referred.

? An implementing regulation may provide for additional tubes on venue, especially of claims for compensation and agaillary claims.

## ARTICLE 60

# Jurisdiction of Subject Matter

The Restitution Authorities shall have jurisdiction of the eithest matter irrespective of whether under any other law a claim for restitution would come within the jurisdiction of any ordinary, administrative, or other court, or whether no court whatsoever would have jurisdiction.

## ARTICLE 61

# Notice of Claim

1 The Restitution Agency shall give notice of the petition by formal service on the parties concerned requiring that an answer he filled within two months. Parties concerned thall he deemed the restitutor, persons holding interests in rem, becomes or tenants of the confiscated property as any other person the claimant might demand to be inited by the proceedings. If the German Reich, a Land, a former limit the former NSDAP or one of its formations or that the former NSDAP or one of its formations or initial demandations is a party concerned, service shall be made upon the State Minister of Finance. In the cases the sited in sentence 3 the State shall be authorized to the proceedings as a party in interest.

Where the restitutor or his present address is unknown where it appears from the netition that any unknown hird person may have an interest in the confiscated promotive the Restitution Agency shall cause the service by multication of the netition; the restitutor and the unknown that persons shall be requested thereby, within two months the Restitution Agency. Service by publication shall be made musicant to Section 204, paragraph 2, of the Code of Civil Procedure as amended by Control Council Law No. 38 in the form prescribed for a summons. Service shall be defined to be effective one month after publication in the terrindical specified in Section 204, paragraph 2, of the Code of Civil Procedure.

3 Upon service of the netition the case shall be deemed to be pending (rechtshängig).

4 When the claim for restitution affects real property or an interest in the nature of real property, the Restitution Agency shall reduce that an entry in the Land Title for Agency shall reduce that an entry in the Land Title Register be made to the effect that a claim for restitution has been filed. (Notice of restitution, Rückerstattungsverheik) The notice of restitution shall be effective against any third person.

5 The provisions of the Code of Civil Procedure con-

# ARTICLE 62

# Procedure before the Restitution Agency

If no objection has been raised against a petition within the time specified in the notice or in the service by redication, the Restitution Agency shall issue an order radication, the Restitution Agency shall issue an order raing the petition. Where there is no dispute as to the fact of encumbrances and as to the continued existence of interests, it shall also make the appropriate findings on the matters.

2. If, however, the claim for restitution does not state cause of action, or the truth of any of the allegations constituted of action, or the truth of any of the allegations constituted by entries in public records of the public documents available to the Restitution Agency, but latter shall order the claimant to submit a statement within an appropriate period of time. The Agency shall causes the petition on the nexts if the claimant does not

keit einer Wiedergutmachungsbehörde, so verweist sie den Rückerstattungsanspruch an die zuständige Wiedergutmachungsbehörde. Der Verweisungsbeschluß ist für diese hindend.

2. Durch Ausführungsverordnung können weitere Vorschriften über die örtliche Zuständigkeit, namentlich zur Geltendmachung von Ersatz- und Nebenansprüchen, erlassen werden.

#### ARTIKEL 60

# Sachliche Zuständigkeit

Die Wiedergutmachungsorgane sind sachlich zuständigehne Rücksicht darauf, ob unter anderen gesetzlichen Bestimmungen ein Rückerstattungsanspruch zur zuständigkeit der ordentlichen Gerichte oder der Verwaltungs- oder sonstiger Gerichte gehören würde oder der Rechtsweg ausgeschlossen

# ARTIKEL GI

# Bekanntgabe der Anmeldung

1. Die Wiedergutmachungsbehörde hat den Rückerstattungsanspruch den Beteiligten zur Erklärung binnen zwei Monaten durch förmliche Zustellung betranntzugeben. Beteiligte sind der Röckerstattungspflichtige, dinglich Berechtigte. Mieter und Pächter des entzogenen Vermößensgegenstandes, sowie diejenigen sonstigen Betroffenen, deren Uinbeziehung in das Verfahren der Berechtigte beantragt. Wenn der Beteiligte das Deutsche Reich, ein Land oder ein früheres Land, die vormalige Nationalsozialistische Deutsche Arbeiterpartei, eine ihrer Gliederungen oder angeschlossenen Organisationen ist, so erfolgt die Zustellung an den Staatsminister der Finanzen. Das Land ist in den Fällen des Satzes 3 berechtigt, als Partei im Verfahren aufzufreden.

2. Ist der Rückerstattungspflichtige oder seine gegenwärtige Anschrift unbekannt oder ist auf Grund der Anmeldung anzunehmen, daß unbekannte Dritte in Anschung des entzogenen Gegenstandes Rechte besitzen, so hat die Wiedergutmachungsbehörde die Anmeldung des Rückerstattungsgutmachungsbehörde die Anmeldung des Rückerstattungsgutmachungspflichtigen und die unbekannten Dritten aufzuforderntungspflichtigen und die unbekannten Dritten aufzuforderntmachungsbehörde auzumelden und zu begründen. Die öffentliche Zustellung erfolgt nach Maßgabe des § 204. Absatz 2 der ZPO in der Fassung des Kontrollratgesetzes Nr. 38 in der für Ladungen vorgeschriebenen Ferm. Die Zustellung milt als an dem Tage erfolgt, an welchem seit der Fintielung in das in Absatz 2 des § 204 ZPO bezeichnete Mitteilungsblatt ein Monat verstrichen ist.

3 Die Rechtshängigkeit witt mit der Zustellung der An-

4. Biehtet sich der Ansnruch auf Kickerstattung eines Grundstücks oder grundstücksgleichen Bechter, so hat die Wiedergutmachungsbehörde die Fintragung der Anmeldung des Rückerstattungsanspruchs im Grundbuch herbeizuführen (Rückerstattungsvermenk). Der Rückerstattungsvermerk wirkt gegen ieden Dritten.

wirkt gegen ieden Dritten.

5. Die Bestimmungen der Zivilnrozesordnung über die Streitverbündung und Nebenintervention, finden entsprechende Anwendung

## ARTIKEL 62

# Verfahren vor der Wiedergutmachungsbehörde

1. Wird innerhalb der Frklärungsfrist oder der durch die öffentliche Bekanntmodung erfolgten Anmeldefrist kein Widerspruch erhoben, so gibt die Wiedersutmachungsbebörde durch Beschluß dem Antrag statt. Wenn über die hörde durch Beschluß dem Porthodust von Rechten kein nehnstungsgrenze und dem Porthodusel von Rechten kein Strett besteht, so trifft sie auch hierüber die erforderlichen Feststellungen.

2. Ist ledoch der Ruckerstaltunesantrus nicht schlüssig begründet oder stehen der Richtiskeit der zu seiner Begründung vergehrschten Behanntungen Eintelige in öffentlichen Registern oder öffentlichen Urkunden die der Wiederlichen Begistern oder öffentlichen Urkunden die der Wiederlichen Begistern oder öffentlichen Urkunden die der Wiederlichen Begistern oder öffentlichen Urkunden die der Wiederlichtnachungsbehörde verlieten, entregen so hat die Wiederlichtnachungsbehörde den Antranstellen zur Erkfärung der über hinnen einer von ihr zu setzenden ansemessenen Frist nie hinnen einer von ihr zu setzenden ansemessenen Frist nieden den Bielerstättung und Erglichtnachung und Erglichtn

petition or supplementing the facts alleged therein.

3. If an objection is made the Restitution Agency shall attempt to reach an amicable settlement unless the futility of such effort is evident. When an amicable settlement has been reached the Restitution Agency shall, on application, record the settlement in writing, and shall deliver a certified copy of the seitlement to the parties concerned.

#### ARTICLE 63

#### Reference to the Court

- 1. If an amicable agreement cannot be reached in whole or in part or if the measures to be taken are not within the power of the Restitution Agency, it shall refer the case to the extent necessary to the Restitution Chamber of the District Court having jurisdiction over the Restitution Agency. This shall apply in particular also to cases where only the limit of encumbrance, or the continued existence of interests or the liability for debts is disputed.
- 2. Implementing regulations may confer jurisdiction on certain District Courts or on District Courts other than those specified in paragraph 1.
- 3. The Restitution Agency may stay the proceedings for a period not exceeding six months before referring the case to the Restitution Chamber, if the claimant consents and an amicable agreement may be expected.

#### ARTICLE 61

#### Appeal (Einspruch)

1. Any party to the case, by filing an appeal with the Restitution Agency, may appeal to the Restitution Chamber from a decision of the Restitution Agency rendered pursuant to Article 59, paragraph 1, second sentence, or Article 62. paragraphs 1 and 2; the period in which to file the appeal shall be one month; it shall be three months, if the appellant resides in a foreign country. The period to appeal shall begin to run with the service of the decision to be appealed om. Article 61, paragraph 2, shall be applicable.

2. The appeal may be based only or a violation of

Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 or 2.

### ARTICLE 65

#### Execution

Agreements recorded by the Restitution Agency and orders of the Restitution Agency which are no longer subject to appeal may be enforced by execution pursuant to the provisions of the Code of Civil Procedure. For this purpose, the Restitution Agency shall have the powers of a court (Voll-streckungsgericht). In effecting execution, the Restitution Agency may avail itself of the services of other agencies, especially of the courts.

# PART X JUDICIAL PROCEEDINGS

#### ARTICLE G

## Members of the Restitution Chamber

The Restitution Chamber shall be composed of a Presiding Judge and two Associate Judges, eligible for the office of judge or for the higher Administrative Service. The Presiding Judge shall be a judge normally assigned to a court. The Associate Judges shall be appointed for a term of three years, unless they are professional judges. One of the three judges shall belong to a class of persons persecuted for any of the reasons set forth in Article 1.

## AUTICLE 67

### Procedure

1. The Restitution Chamber shall adjust the legal relations of the parties in interest according to the provisions

submit within this period an explanation justifying his zung des Vorbrin, ens settens des Antragstellers nicht geals unbegründet zurückzuwelsen.

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3. Wird Widerspruch erhoben, so hat die Wiedergutmachungsbehorde den Versuch einer gütlichen Einligung zu machen, sofern nicht die Erfolglosigkeit eines solchen Versuchs mit Bestimmtheit vorauszusehen ist. Kommt eine gütliche Einigung zustande, so hat die Wiedergutmachungsbehörde die Ver a parung auf Antrag schriftlich niederzulegen und den Beteiligten von Amts wegen eine Ausfertigung der Niederschrift zu erfellen.

#### ARTIKEL 63

## Verwelsung an das Gericht

- 1. Kommt eine gütliche Einigung ganz oder teilweise erford-rlichen nicht zustande oder fiberstelgen die erforderlieben Maßnahmen die Zuständigkeit der Wiedergutmachungsbehörde, so verweist diese insowelt die Sache an die Wiedergutnischungskommer des für den Sitz der Wied reut-machungsbehörde zuständigen Landgerichte. Dies gilt inbesondere auch, wenn lediglich über die Belactung grenze, den Fortbestand von Rechten oder die Haftung für Verbadlichkeiten Streit besteht.
- 2. Durch Ausführungsverordnungen kann die Zuständigkeit allgemein auf bestimmte oder andere als die in Absatz1
- bezeichneten Landgerichte übertragen werden.

  3. Die Wiedergufmachungsbehörde kann das Verfahren vor der Verweisung bis zur Höchstdauer von sechs Monaten ausselzen, sofern der Berechtigte zustimmt und eine gütliche Einigung zu erwarten ist.

## ARTIKEL 61

# Einspruch

- Gegen eine Entscheidung der Wiedergutmachungsbehörde gemäß Artikel 59, Absatz 1, Satz 2 und gemäß Artikel 62, Absatz 1 und 2 kann jeder Beteiligte binnen einem Monat und wenn er im usland seinen Wohnsitz hat, binnen drei Monaten die Entscheidung der Wiedergut-machungskammer durch Einspruch zur Wiedergutmachungsbebörde aprufen. Die Frist beginnt mit der Zustellung der anzusechtenden Entscheidung. Artikel 61, Absatz 2 findet entsprechende Anwendung.
- 2. Der Einspruch kenn nur auf eine Verletzung der Vor-schriften des Artikels 59, Absatz 1, Satz 2 oder des Artikels 62, Absatz 1 und 2 gegründet werden.

### ARTIKEL 65

#### Vollstreckbarkeit

Aus den von der Wiedergutmachungsbehörde ausgefertig-Vereinbarungen und aus den rechtskräftigen Be-Wiedergulmachungsbehörde findet schlüssen der Zwangsvollstreckung nach den Vorschriften der Zivilprozeßordnung statt. An Stelle des Vollstreckungsgerichts tritt die Wiedergutmachungsbehörde, Sie kann sich bei der Durchführung der Vollstreckung anderer Behörden, insbegondere des Vollstreckung anderer Behörden, insbesondere des Vollstreckungsgerichts, bedienen.

# ZEHNTER ABSCHNUTT GERICHTLICHES VERFAHREN

## ARTIKEL 66

## Besetzung der Wiedergulmachungskammer

Die Wiedergutmachungskammer besteht aus einem Vorsitzenden und zwei Beisitzern, welche die Befähigung zum Richteramt oder zum höheren Verwaltungsdienst haben müssen. Der Vorsitzende muß ein Richter der ordentlichen Gerichtsbarkeit sein. Die Beisitzer werden, soweit sie nicht selbst Berufsrichter sind, auf die Dauer von drei Jahren ernannt. Einer der drei Richter soil dem Kreise der aus den Gründen des Artikels 1 Verfolgten angehören.

#### ARTIKEL 67

#### Verfahren

die Rechts-1. Die Wiedergutmachungskammer hat beziehungen der Beteiligten gemäß diesem Gesetz zu geht cc-

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Artikels

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em Vorung zum hah n milichen sie nicht d Jahren der aus

2. Unless this Law provides otherwise, the procedure shall Antrag ; be governed by the rules of procedure applicable in matters 1 d non-contentious litigation, subject, however, to the followng modifications:

- (a) The Chamber shall order an oral hearing; the hearing shall be public.
- (b) The proceedings may be stayed for a period not to exceed six months, at the request of the claimant. Repeated stays may be granted after the case has been reopened.
- (c) The Chamber shall render partial judgment on one or more of the claims before it, or on part of a claim, where the determination of any counterclaim, offset or equitable lien or any other defence in the nature of an offset or a counterclaim would substantially delay the decision on restitution.
- (d) Without prejudice to the final decision, the Chamber may order the temporary surrender of the confiscated property to the claimant either with or without security. In this case the claimant shall have, with respect to third persons, the rights and obligations of a trustee.

#### ARTICLE 68

# Form and Contents of the Decision

1. The decision of the Restitution Chamber shall be prosounced in an order supported by an opinion; the order shall be served on the parties concerned. Immediate execution may be had on this order, a subsequent appeal notwithstanding. The provisions of Sections 713, paragraph 2, and Sections 713a to 720 of the Code of Civil Procedure shall be applicable.

2. An appeal (sofortige Beschwerde) may be taken from his order within one month; the appeal may be filed within bree months if the appellant resides in a foreign country. The time to appeal shall begin to run from the date of service of the order; Article 61, paragraph 2, shall be applicable. The Civil Division of the Court of Appeals Operlandesgericht) shall hear the appeal. The appeal may be based only on the ground that the decision violated the aw. The provisions of Sections 551, 561 and 563 of the Code of Civil Procedure shall be applicable.

3. Implementing regulations may confer jurisdiction to hear such appeals on a certain Court of Appeals.

## ARTICLE 69

# Board of Review

A Board of Review shall have the power to review any decision on any claim for restitution under this Law and to take whatever action is deemed necessary with respect thereto. Regulations to be issued by Military Government will provide for the appointment and composition of the Board, its jurisdiction, procedure, and such other matters as are deemed appropriate.

# PART XI SPECIAL PROCEEDINGS

## ARTICLE 70

# Petition by the Public Prosecutor

Where no petition for the restitution of confiscated prop-tity has been filed on or before 31 December 1948, the Public Prosecutor at the seat of the Restitution Chamber may file the petition for restitution on behalf of a succex.or or contration provided for in Article 10. This provi-You shall not apply it the claimant has waived his claim by restitution in accordance with Article 11, paragraph 3. The petition of the Public Prosecutor must be filed on or Wore 30 June 1249.

2. Soweit keine anderweitigen Bestammungen in diesem Gesetz getroffen sind, sind für das Verfahren die Vor-schriften über das Verfahren in Sachen der freiwilligen Gerichtsbarkeit mit den folgenden Mafiganen entsprechend anwendbar:

- (a) Die Kammer muß eine mündliche Verhandlung anordnen. Die Verhandlung ist offentlich.
- (b) Auf Antrag des Berechtigten kann das Verfahren bis zur Höchstdauer von seens Monaten ausgesetzt Die Aussetzung kann nach Fortsetzung werden. des Verfahrens wiederholt werden.
- (c) Die Wiedergutmachungskammer hat ein Teilurteil hinsichtlich einzelner von mehreren Ansprüchen oder eines Teils eines Anspruchs zu erlassen, wenn die Entscheidung über eine Widerklage, einen Aufrechnungsanspruch, ein Zurückbehaltungsrecht oder einen ähnlichen Recht behelf die Entscheidung über die Rückerstattung erheblich verzögern würde.
- (d) Die Kammer, kann vorbehaltlich der endgültigen Entscheidung die vorläufige Herausgabe entzogener Vermögensgegenstände gegen oder ohne Sicherheitsleistung an den Antragsteller anordnen. Der Antragsteller hat in diesem Falle gegenüber Dritten die Rechtsstellung eines Treuhänders.

#### ARTIKEL 63

# Form und Inhalt der Entscheidung

1. Die Wiedergutmachungskammer entscheidet durch einen mit Gründen versehenen Beschluß, der den Beleiligten zuzustellen ist. Der Beschluß ist vorläufig vollstreckbar. §§ 713, Absatz 2, 713a bis 720 ZPO finden entsprechende Anwendung.

2. Gegen den Beschluß findet innerhalb einer Frist von einem Monat und wenn der Beschwerdeführer seinen Wohnsitz im Ausland hat, innerhalb einer Frist von drei Monaten die sofortige Beschwerde statt. Die Frist beginnt mit der Zustellung; Artikel 61, Absatz 2 findet ent-sprechende Anwendung. Über die Beschwerde entscheidet der Zivilsenat des Oberlandesgerichts. Die Beschwerde kann nur darauf gestützt werden, daß die Entscheidung auf einer Verletzung des Gesetzes beruhe. Die Vorschriften der §§ 551, 561, 563 ZPO finden entsprechende Anwendung.

3. Durch Ausführungsverordnungen kann die Zuständigkeit zur Entscheidung über Beschwerden allgemein auf eines von mehreren Oberlandesgerichten übertragen werden.

## ARTIKEL 69

### Board of Review

Ein Board of Review ist ermächtigt, alle Entscheidungen nachzuprüfen, die einen nach Maßgabe dieses Gesetzes erhobenen Rückerstattungsanspruch betreffen, sowie die nach Sachlage erforderlichen Maßnahmen zu ergreifen. Ausführungsvorschriften der Militärregierung werden die Ernennung und Zusammensetzung des Board, seine Zuständigkeit, das Verfahren und alle weiteren Einzelheiten regeln.

# ELFTER ABSCHNITT BESONDERE VERFAHREN

# ARTHEEL 70

# Antragsrecht der Staatsamvallschaf,

Wird bezüglich entzogener Vermögensgegenstände ein Rückerstattungsanspruch bis zum 31. Dezember 1948 nicht geltend gemacht, so kann die Staatsanwaltschaft am Sitze Wiedergulmachungskammer den Rückerstattungsanspruch zu Gunsten einer in Artikel 10 vorgesehenen Nach-folgeorganisation geltend machen. Dies gilt nicht, wenn der Berechtigte auf seinen Rückerstattungsanspruch gemäß Artikel II, Absatz 3 verzichtet hat. Der Antreg der Stadtsanwaltschaft kann nur bis zum 30. Juni 1949 gestellt werden.

#### ARTICLE 71

# Conflict of Jurisdiction

1. If claims as described in Articles 1 to 48 are asserted by a person entitled to restitution in a court proceeding wage of compulsory execution by way or tacluding to e or countercious, the Court shall notify the Rest and Spency. The Court may, and on request by the Re atotal Agency must, stay the proceedings or temporarry suspend execution by an order from which no appear may be taken. The Resultation Agency may direct that the claim be dealt with under this Law to the exchasion of the jurisdiction of the ordinary civil courts, or it may authorize the claimant to prosecute his claim before the ordinary civil courts; such authorization shall be binding on the latter courts. It an action in the ordinary civil courts is terminated because the ciaim is being deatt with under this Law, the court fees shall be remuted and nemaer party shall be entitled to costs incurred out of

2. The Court shall report to the Central Filing Agency any action taken under paragraph 1.

### PART XII

# ASSESSMENT OF COSTS

## ARTICLE 72

#### Costs

1. As a rule no court fees shall be assessed in favor of the State (Gerientskosten) in proceedings before Restitution Authorities. However, implementing regulations may provide for the assessment of costs, fees and expenses.

2. No advance payment, or bend or security for costs may be demanded from a claimant.

# PART XIII DUTY TO REPORT AND PENALTIES

## ARTICLE 73

# Duty to Report

- 1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances
  - (a) is confiscated property within the meaning of the provisions of Article 2; or
  - (b) is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
  - (c) has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4.

shall report this fact in writing to the Central Filing Agency on or before 15 May 1948.

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the preperty; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was trans-

2. The following property need not be reported:

(a) Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the burness of auctioning or otherwise disposing of confiscated property, must be reported;

## ARTHERI, 71

# Zuständigkeitzbereinigung

1. Werden Ans vrüche der in den Artikeln 1 bis 43 bezeich. neten Art in to-the gerichtichen Verlanden einschnengen der Zwangsvollareckung vom Berechtigten klage- oder eigredewerse gettend gemacht, so hat das Caricat die Wiegegutmachungsbehorde zu benachrichtigen. Das Gericht kam eurch unanteentbaren besteinb das Verlahren ausseizen bad die Zwangsvenstreikung einstweifen einstellen; auf Erungsbehorde sind diese Aherd. suchen der Wintergutm recergat tachengsbenords rain nungen zu treilen. 1 inspruchs nach nlangage die.es the Weiterbehandlung Gesetzes mit der Wirkung des Auschlusses des lechts. Weges anordren oder nut Sindung für das Gericht den Berechtigten die Gestendmachung des Anspruch an ordent lichen Reentsweg überlassen. Eindet em Rechtsarreit durch Weiterbehandlung des Anspruchs nach Massgabe dieses Gesetzes seine Erieoigung, so werden die Gerichtskosten filedergeschlagen, die aubergerichtlichen Kosten gegenemander autgehoben.

2. Das Gericht hat dem Zentralanmeldeamt jede gemäß Absatz 1 getrottene Maßnehme mitzuteilen.

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# ZWÖLFTER ABSCHNITT KOSTENBESTIMMUNGEN

# ARTIKEL 72

# Kosten

1. Das Verfahren vor den Wiedergutmachungsorganen ist grundsatzlich gerichtskostenfrei. Im übrigen werden Austuhrungsverordnungen die Tragung und Festsetzung von Kosten, Gebuhren und Auslagen regeln.

2. Der Berechtigte ist nicht verpflichtet, Vorschüsse oder Sicherheit für Kosten zu leisten.

# DREIZEHNTER ABSCHNITT

# APPRIGEPFLICHT UND STRAFBESTIMMUNGEN

## ARTIKEL 73

# Anzeigepflicht

- 1. Wer Vermögensgegenstände, von denen er weiß oder 20.3 Umständen nach annehmen muß,
  - (a) daß sie im Sinne des Artikels 2 dieses Gezetzes entzogen sind; oder
  - (b) daß eine solche Entzichung nach den Vorschriften des Artikels 3, Absatz 1 vermutet wird; oder
  - (c) daß sie zu irgendeiner Zeit Gegenstand ein's Rechtsgeschüfts waren, das nach den Bestimmun-gen des Artikels 4, Absatz 1 angefockten werden

im Besitz hat oder zu irgendeinem Zeitpunkt, nachdem der Verfolgte über sie verfügt hat oder sie ihm entzogen werden sind, im Besitz hatte, muß dies schriftlich dem Zentralanmeldeamt bis zum 15. Mai 1943 anzeigen. Die Anzeige muß genaue Angaben darüber enthalten, wie der Anzeigeerstatter in den Besitz des Vermögensgegenstandes gelangt ist, sie muß Namen und Wohnort desjenigen angeben, von dem der Anzeigeerstatter den Vermögensgegenstand erneltea hat, das entrichtete Entgelt und, falls der Vermögen gegatstand nicht mehr im Besitz des Anzeigeerstatters ist, des Namen desjenigen, an den der Vermögensgegenstand übertragen worden ist.

2. Die Anzeigepflicht entfällt:

(a) Bei beweg ichen Sachen, die im Wege des ordnungsmäßigen üblichen Geschäftsverkehrs aus einem einschlägigen Unternehmen erworben wetden sind; anzeigepflichtig sind jedoch Sacien, is im Wege der Versteigerung erworben worden sind oder in Unternehmen, die sich mit der Verteile rung oder sonstigen Verwertung entzogener Vermögensgegenstände in erheblichem Maße befaßtes. 3 bezeich-.chacoach mer citiiederkatan en und aul Er-Anordrde kann we dieses 3 Rechtsricht den n ordenteit durch icses Gesten nicacmander

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- (b) Tangible personal property, the value of which did not exceed RM 1,000 at the time of the confiscation;
- (c) Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral consideration;
- (d) Property which has already been restituted and property as to which the claimant has relinquished his right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this Law.
- 3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.
- 4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

#### ARTICLE 74

Obligation to Inspect the Land Title Register and other Public Registers

- 1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.
- 2. Whenever a public authority or other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4, shall be applicable.

## ARTICLE 75

#### Penalties

- 1. Any person who
  - (a) intentionally or negligently fails to comply with his duty to report as set forth in Article 73 and 74; or,
  - (b) knowingly makes any false or misleading statements to the Restitution Authorities,

shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subbaragraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

#### ARTICLE 76

### Penaltles (continued)

- I. Whoever alienates, damages, destroys, or conceals any hoperty coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.
- Confinement in a penitentiary up to five years may be imposed in especially serious cases.
  - 3. The attempt shall be punishable.

- (b) bei beweglichen Sachen, deren Wert im Zeitpunkt der Entziehung den Betrag von RM 1.000, - nich., überstiegen hat;
- (c) bei Schenkungen zwischen nahen Verwandten (§ 52, Absatz 2 StGB) und bei unzweifeinaften Anstandsschenkungen;
- (d) bei bereits zurückerstatteten Vermögenegegenständen und bei solchen Vermögensgegenständen, auf deren Rückerstattung der Berechtigte in der Zeit vom 8. Moi 1945 bis zum Inkrafttreten dieses Gesetzes ausdrücklich schriftlich verzichtet hat.
- 3. Eine gemäß Absatz 1 erstattete Anzeige den im Verleiwen vor den Wiedergutmachungsorgaren nicht als Gekendnis des Anzeigenden gewertet werden, daß die angemeldeten Vermögensgegenstände der Rückerstattung unterliegen; ebensowenig darf eine solche Anzeige als Verzicht auf einen Einwand ausgelegt werden, den der Anzeigende hätte geltend machen können, wenn er die Anzeige
  nicht erstattet hätte. Die Anzeige kann jedoch als ein Geständnis in bezug auf die ehrin mitgeteilten Tatsachen gewertet werden.
- 4. Das Zentralanmeldeamt hat nach Erhalt einer auf Grund der Bestimmungen dieses Artikels erstatteten Anzeige eine Abschrift der Anzeige an die zuständige Wiedergutnachungsbehörde oder die zuständigen Wiedergutnachungsbehörden in dem Bezirk weiterzuleiten, in dem sich degendwelche in der Anzeige in Bezug genommene Vermögensgegenstände befinden. Die Einsicht in alle genäß den Vorschriften dieses Arlikels erstatteten Anzeigen ist gestattet.

#### ARTIKEL, 74

# Pflicht zur Einsicht des Grundbuchs und anderer biffentlicher Register

- 1. Wer ein Grundstück oder ein grundstückgleiches Recht besitzt, ist verpflichtet, sich durch Einsicht des Grundbuchs zu vergewissern, daß es sich nicht um einen anzeigenflichtigen Vermögensgegenstand handelt. Das gleiche gitt von Vermögensgegenständen, die in underen ößfentlichen Registern eingetragen sind.
- 2. Erlangt eine Behörde oder öffentliche Dienststelle Kenntnis von dem Verbleib eines anzeigepflichtigen Vermögensgegenstandes, so hat sie unverzüglich dem Zentralanmeldemat Mitteilung zu machen. Artikel 73, Absatz 4 gitt entsprechend.

# ARTHER, 75

# Strafbestimmungen

- 1. Mit Gefängnis bis zu fünf Jahren und mit Geldstrafe oder mit einer dieser Strafen wird, soweit nicht auf Grund anderer Bestimmungen eine höhere Strafe verwirkt ist, bestraft,
  - (a) wer seiner Anzeigepflicht auf Grund der Artikel
     73 und 74 vorsätzlich oder fahrlässig nicht nachkommt,
  - (b) wer gegenüber den Wiedergutmachungsorganen wissentlich falsche oder irreführende Angaben macht.
- 2. Der Täter bleibt im Falle des Absatzes 1 (a) straflos, wenn er vor Futdeckung die nach diesem Gesetz vorgeschriebene Anzeige treiwillig nachholt.

# ARTIKUL 76

# Stratbestimmungen, (Fortsetzung)

- 1. Mit Gefängnis bis zu fünf Jahren und mit Geldstram oder mit einer dieser Strafen wird, soweit nicht auf Grand anderer Bestimmungen eine höhere Strafe werwirkt ist, bestraft, wer Vermögensgegenstände, die unter die Bestimmungen dieses Gesetzes fallen, veräußert, beschädigt, vernichtet oder beiseite schafft, um sie dem Zugriff des Berechtigten zu entziehen.
- 2. In besonders schweren Fällen tritt Zuchthausstrafe bi: 2u fünf Jahren ein.
  - 3. Der Versuch ist strafbar.

## ARTICLE 77

## Penalties (continued)

In the cases within the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, if and to the extent to which Article 74 imposed on bim the obligation of ruch inspection.

### PART NIV

# RE-ESTABLISHMENT OF RIGHTS OF SUCCESSION AND ADOPTION

#### ARTICLE 78

# Exclusion from Inheritance

1. An exclusion from the right of succession or the forfeiture of an estate which occurred during the period from 30 January 1933 to 8 May 1915 by virtue of a law or an ordinance for any of the reasons set forth in Article 1 shall be deemed not to have occurred.

2. The succession shall be deemed to have occurred at the effective date of this Law for the purpose of determining the periods of limitation.

# ARTICLE 79

# Avoidance of Testamentary Dispositions and of Disclaimers of Inheritance

1. Testamentary dispositions and contracts of inheritance made in the period from 20 January 1933 to 8 May 1945 in which any descendant, parent, grandparent, brother eister, half-brother, half-sister, or their descendents, as well as a spouse, was excluded from inheritance for the purpose of a spouse, was excluded from inheritance for the purpose of avoiding a seizure of the estate by the State, expected by the testator for any of the reasons set forth in Article 1, shall be voidable. The power of avoidance shall be governed by Sections 2020 et seq. or 2231 et \$27. of the Civil Code, unless paragraph 3 infra provides oth, wise.

2. Disclaimers of inheritance by persons described in paragraph 1 shall be voidable, provided that such disclaimers were made within the period from 30 January 1933 to 8 May 1945 in order to prevent an expected seizure of the property by the State for any of the reasons set forth in Article 1. The right of avoidance shall be governed by Sections 1954 et seq. of the Civil Code, unless paragraph 3

of this Article provides otherwise.

3. Testamentary dispositions, contracts of inheritance or disclaimers of inheritance must be voided on or before 31 December 1948. The exercise of the power of avoidance within this period shall be deemed timely.

## ARTICLE 80

# Testamentary Disposition of a Persecuted Person

1. A testamentary disposition made between 30 January 1933 and 8 May 1945 shall be valid in spite of complete non-compliance with form requirements if the testator made such disposition in view of an actual or imaginary immediate danger to his life based on measures of persecution for any of the reasons set forth in Article 1, and where the circumstances were such that he could not or could not be expected to, comply with the statutory form requirements.

2. Any testamentary disposition coming within the scope of paragraph 1 shall be deemed not to have been made if the testator was still capable of making a testamentary disposition complying with the statutory form requirements

# after 30 September 1945.

# ARTICLE 81

# Re-Establishment of Adoptions

1. If an adoption relation hip was cancelled within the period from 30 January 1953 to 8 May 1945 for any of the reasons set forth in Article 1, such relationship may be reinstated more pro tune by a contract between the foster parent or his heirs and the child or his heirs. Sections 1741

#### ARTHEEL 77

# Strafbestlamungen, (Fortsetzung)

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Niemand kann sich in den Fällen der Artikel 75, 76 att die Unkenntnis von seichen Tattachen berufen, die er auf Grund einer Einsleht in öffentliche Büch woder Registererfahren hätte, wenn und soweit er nach Attikel 74 zu einer solchen Einsleht verpflichtet war.

# VIERZEHNTER ABSCHNITT

# WIEDERHERSTELLUNG VON EEBRECHTEN UND KINDESANNAHMEVERHKLINISSEN

## ARTIKEL 78

#### Erbyerdrängung

- Ein in der Zeit vom 30. Januar 1923 bis 3. Mai 1945 aus den Gründen des Artikels 1 durch Gesetz oder Verordaung erfolgter Ausschluß von Erwerb von Todes wegen oder Verfall des Nachlasses gilt als nicht eingetreten.
- Für die Fristenberechnung gilt der Erbfall mit dem Inkrafttreten dieses Gesetzes als eingetreten.

# ARTIKEL 79

# Anfechtbarkeit von Verfügungen von Todes wegen und Erbschaftsausschlagungen

- 1. Letztwillige Verfügungen und Erbverträge aus der Zeit vom 30. Januar 1933 bis 8. Mai 1945, in welchen Abkömmlinge, Eltern, Großeltern, voll- und halbblütige Geschwister und deren Abkömmlinge, sowie Ehegatten von der Erbfolge ausgeschlossen wurden, um ihren Erbteit einem vom Erblasser aus den Gründen des Artikels 1 erwarteten Zugriffs des Staates zu entziehen, sind anfechtbar. Vorbehaltlich der Bestimmungen des Absatz 3 finden auf die Anfechtung die Vorschriften der §§ 2000 ff. bzw. 2231 ff. BGB. Awendung.
- 2. Erbschaftsausschlagungen durch die im Absatz 1 genannten Personen sind anfechtber, wenn sie in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 erfolgten, um dadurch einen aus den Gründen des Artikels 1 erwarteten Zugrift des Staates auf den Erbteil zu verhindern. Vorbehaltlich der Bestimmungen in Absatz 3 finden auf die Anfechtung die Vorschriften der §§ 1954 ff. BGB Anwendung.
- 3. Die Anfechtung von letztwilligen Verfügungen und Erbverträgen sowie von Erbschaftsausschlagungen muß bis 31. Dezember 1948 erfolgen. Eine innerhalb dieser Frist erfolgte Anfechtung gilt alst rechtzeitig.

# ARTIKEL 80

# Verfolgten-Testament

- 1. Der Gültigkeit einer in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 erklärten letztwilligen Verfügung steht des Fehlen jeglicher Form nicht entgegen, wenn der Erblasser zu der Verfügung durch eine aus den Gründen des Artikels 1 erwachsene unmittelbare Todesgefahr, in der er sich befand oder zu befinden glaubte, veranlaßt wurde und ihm die Festlegung in gesetzlicher Form nach den Unständen unmöglich oder nicht zuzumuten war.
- 2. Eine nach Absatz 1 zu beurteilende letztwillige Verfügung gilt als nicht getroffen, wenn der Erblusser nach dem 30. September 1945 zu einer formgerechten letztwilligen Verfügung noch in der Lage war.

## ARTIKEL 81

# Wiederherstellung von Kindesannahmeverhältnissen

1. Ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1935 aus den Gründen des Artikels 1 aufgehobenes Kindesannahmeverhältnis kann durch Vertrag des Annehmenden oder seiner Erben mit dem Kinde oder seinen Erben räckwirkend zum Zeitpunkt der Aufnebung wiederhergestellt.

o 1777 of the Civil Code, with the exception of Sections 744, 1745, 1747, 1752 and 1753, shall apply to the contract f reinstatement. A contract of reinstatement may be judially affirmed even after the death of the parties to it.

The parties concerned is not available, a guardian feer may be appointed to represent his interests in the evenings to reinstate the adoption.

.2 Where in adoption was cancelled by decision of a court uring the period from 30 January 1933 to 8 May 1945 for my of the reasons set forth in Article 1, and if no facts are appeared which thereafter would have caused concacting period to revoke the adoption on their own initiative, either party to the contract or his heirs may demand hat the decision be vacated.

3. The local court (Amisgericht) which cancelled the doption shall have jurisdiction in the cases set forth in aragraph 2. The principles of pavagraph 1, fourth sentence, bove, shall be applicable. The decision of the court shall e discretionary and shall take into account the coulties of ne parties. When the cancellation of the adoption is acated, the adoption shall be reinstated nunc pro tune. The part may exclude the retroactive effect of its decision from artain parts thereof.

4. No costs or fees shall be charged in these proceedings.5. The application for re-establishment of an adoption

ust be made on or before 31 December 1948.

#### ARTICLE 83

#### Jurisdiction

Any claims arising under Articles 78 to 81 shall be decided at the ordinary civil courts. No filing with the Central Ring Agency is required.

#### PART XV

# REINSTATEMENT OF TRADE NAMES AND OF NAMES OF ASSOCIATIONS

#### ARTICLE 83

## Re-Registration of Cancelled Trade Names

1. Where a trade name was cancelled in the Commercial egister within the period from 30 January 1933 to 8 May 15 after the business establishment had been closed for a of the reasons set forth in Article 1, the cancelled trade me shall be re-registered on application if the business represed by its last owner, or owners, or their heirs.

2. If the closed business establishments was conducted at the time of its discontinuation by a single owner, the last water or his heirs shall be entitled to demand the exemptation of the cancelled trade name. If there are stread heirs, and if not all of them participate in the examption of the enterprise, the re-registration of the cancelled trade name may be demanded, provided the heirs who to participate in the business assent to the resumption of the trade name.

3. If at the time of its closing the business establishment as conducted by several personally liable partners, restitutation of the cancelled trade name may be demanded to!! the personally liable partners establish a business afterprize or if one or several of them do so with the one of the remaining ones; with respect to heirs of stringers the principle of paragraph 2 shall be applicable.

#### ARTICLE 81

#### Change of Trade Name

Where a trade name has been changed in the period for 20 January 1933 to 8 May 1945 for any of the reasons of forth in Article 1, the former trade name may be yed upon the application of the person who owned the prise at the time the change was made or of his heirs,

werden. Auf den Wiederherstellungsvertrag finden die Vorschriften der §§ 1741 bis ₱772 BGB mit Ausnahme der Bestimmungen der §§ 1744, 1745, 1747, 1752 und 1753 Anwendung Die Bestätienung des Wiederherstellungsvertrags kann auch nach dem Tode der am Wiederherstellungsvertrag beteiligten Personen erfolgen. Ist ein Beteiligter nicht erreichbar, so kann für ihn zum Zwecke der Vertredung bei der Wiederherstellung des Kindesannahmeverhältnisses ein Pfleger bestellt werden.

2. Ist das Kindesannahmeverhältnis in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 durch gerichtliche Ertscheidung aus den Gründen des Artitiels 1 aufschoben worden und sind keine Umstände ersichtlich. die die Vertragschlichenden seitdem zur Aufschung des Kindesannahmeverhältnisses veranlaßt hätten, so können sewohl der Annehmende oder einer seiner Erben, wie das Kind oder einer seiner Erben die Aufsebung dieser Entscheidung beantragen.

3. Zuständig zur Entscheidung gemäß Absatz 2 ist das Amtsgericht, welches das Kindesannahmeverhältels aufgehoben hat. Absatz 1. Satz 4 gilt entscheinel. Das Gericht entscheidet nach seinem durch Billigkeit bestimmten freien Ermessen. Durch die Außebung der gerichtlichen Entscheidung tritt das Kindesannahmeverhältnis rückwirkend wieder in Kraft. Das Gericht kann in seiner Entscheidung die Rückwirkung in einzelnen Beziehungen ausschließen.

4. Pas Verfahren ist gebühren- und auslagenfrei.

5. Die Wiederherstellung von Kindesannahmeverhältnissen kann nur bis spätestens 31. Dezember 1948 beentragt werden.

#### ARTIKEL 82

#### Zuständigkeit

Über Ansprüche auf Grund der Artikel 78 bis 81 entscheiden die ordentlichen Gerichte. Eine Anmeldung bei dem Zentralaumeldeamt findet nicht statt.

# FÜNEZEGNTER ABSCHNITT WIEDERHERSTELLUNG VON FIRMEN UND NAMEN

## ARTIKEL 83

#### Wiedereinfragung einer gelöschten Firma

1. Ist in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 eine Firma im Handelsregister gelöscht worden, nachdem der Betrieb des Handelsgeschäftes aus Gründen des Artikels 1 eines dellt war, so ist, wenn der Betrieb eines Handelsgeschäftes von dem oder den letzten Inhabern oder ihren Erben wieder aufgenemmen wird, auf Antreg die gelöschte Firma wieder einzutragen.

2. Wurde das eingestellte Handelsgeschäft zur Zeit der Einstellung von einem Einzelkaufmann betrieben, so steht das Recht auf Wiedereintragung der gelöschten Firma dem letzlen Inhaber oder seinem Erben zu. Sind mehrere Erben vorhanden und nebmen sie nicht alle den Betrieb wieder auf, so kann die Wiedereintragung der gelöschten Firma verlangt werden, wenn die den Betrieb nicht wieder aufnehmenden Erben der Annahme der gelöschten Firma zu-

stimmen.

3. Wurde das einrestellte Händelsgeschäft zur Zeit der Finstellung von mehreren persönlich haftenden Gesellschaftern betrieben, so besteht das Becht auf Wiedereintragung der gelöschten Firma, wenn die nersönlich haftenden Gesellschafter entweder alle, oder einer oder mehrere ven ihnen mit Einverständnis der übrigen, den Petrieb eines Handelsgeschäftes aufnehmen. Im Falle des Erbgangs gilt Absatz 2 entsprechend.

#### ARTIKEL 84

# Anderung der Firma

Ist eine Firma in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 aus den Gründen des Artikels 1 geändert worden, so kann die frühere Firmenbezeichnung wiederhergestellt werden, wenn derjenige, der zur Zeit der Anderung Firmenprovided they now own the enterprise. The principles of Articles 83, paragraph 2, second sentence, and paragraph 3, shall be applicable.

#### ARTICLE 85

## Names of Corporations

The principles of Articles 83 and 84 shall be applicable to the trade names of corporations.

#### ARTICLE 86

# Reinstatement of Trade Names in Other Cases

Whenever the use of the former trade name is essential for the purpose of full restitution, the Restitution Chamber may permit the reinstatement of a cancelled or changed trade name in cases other than those provided for in Articles 83 to 85.

#### ARTICLE 87

# Names of Associations and Endowments (Stiftungen)

Article 86 shall be applicable to the resumption of the name by an association or an endowment.

### ARTICLE 88

#### Procedure

Applications for the registration in the Commercial Register of former trade names must be filed within the period provided for in this Law for the filing of claims for restitution. The Amtsgericht in its capacity as Court of Registry shall have jurisdiction over these applications except in the cases provided for in Article 86. Otherwise the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation. No costs or fees shall be charged in these proceedings.

# PART XVI FINAL PROVISIONS

## ARTICLE 89

#### Claims Reserved to Special Legislation

The reinstalement of lapsed interests arising out of insurance contracts and of lapsed copyrights and industrial rights (patents etc.) may be regulated by special legislation.

# ARTICLE 90

#### Statute of Limitations

To the extent to which the statute of limitations or prescriptive rights of the Civil Code might defeat any claim falling under this Law, the statute of limitations or a prescriptive period shall not be deemed to have expired until six months after such cause of action arises by reason of operation of this Law, but in no event prior to 30 June 1949.

## ARTICLE 91

#### Taxes and Other Levies

- Taxes and other public levies shall not be imposed in connection with restitution.
- 2. No taxes, including inheritance taxes, or other public assessments, fees or costs shall be refunded or subsequently levied in connection with the return of confiscated property,

#### ARTICLE 92

# Implementing and Carrying-out Provisions

1. The Restitution Agencies will be designated by implementing regulations.

inhaber war, oder seine Erben, es als jetzige Inhaber der Firma beantragen. Artikel 83, Absatz 2, Satz 2 und Absatz 3 gelten sinngemäß.

## ARTHEL 85

## Firmen juristischer Personen

Die Vorschriften der Artikel 83 und 84 finden auf Firmen juristischer Personen entsprechende Anwendung.

#### ARTIKEL 86

# Wiederherstellung von Firmennamen in sonstigen Fällen

Die Wiedergutmachungskammer kann die Wiederherstellung einer gelöschten oder einer geänderten Firma auch in anderen als den Fällen der Artikel 83 bis 85 gestatten, sofera die Führung der alten Firmenbezeichnung zum Zwecke der Wiedergutmachung erforderlich ist.

#### ARTHEEL 87

## Vereins- und Stiftungsnamen

Die Bestimmung des Artikels 86 glit entsprechend für die Wiederannahme des früheren Namens eines Vereins oder einer Stiftung.

# ARTHEEL 88

#### Verfahren

Anträge auf Eintragung von früheren Firmenbezeichnet, gen im Handelsregister können nur binnen der in die ergesetz für Rückerstattungsansprüche vorgesehenen Anmeldefrist gestellt werden. Über diese Anträge entscheide unbeschadet Artikel 86 das Amtsgericht als Registergericht. Im übrigen sind für das Verfahren die Vorschriften über das Verfahren in Sachen der freiwilligen Gerichtsbarkeit anwendbar. Das Verfahren ist gebühren- und kostenfrei.

# SECHZEHNTER ABSCHNITT SCHLUSSBESTIMMUNGEN

## ARTIKEL 89

#### Vorbehaltene Ansprüche

Besondere gesetzliche Regelung bleibt vorbehalten für die Wiederherstellung erloschener Rechte aus Versicherungsverhältnissen und erloschener Urheberrechte und gewerblicher Schutzrechte.

#### ARTIKEL 90

## Fristenlauf

Soweit Ansprüchen, die unter dieses Gesetz fallen, Verjährung, Ersitzung oder Ablauf von Ausschlußfristen nach den Vorschriften des bürgerliehen Rechts entgegenstehen würden, gilt die Verjährungs-, Ersitzungs- oder Ausschlußfrist als nicht vor dem Ende von sechs Monaten abgelaufen gerechnet von dem Zeitpunkt, in welchem ein klageanspruch auf Grund dieses Gesetzes zur Entstehung gelangist, keinesfalls jedoch vor dem 30. Juni 1949.

#### ARTIKEL 91

# Steuern und Abgaben

- 1. Steuern und sonstige öffentliche Abgaben werden au Anlaß der Rückerstattung nicht erhoben.
- 2. Eine Erstattung oder nachträgliche Erhebung V. Steuern, sonstigen öffentlichen Abgaben, Gebühren unt Kosten aus Anlaß des Rückfalls entzogener Vermögenstende einschließlich der Erbschaftssteuer findet nicht statt.

#### ARTIKEL 92

# Ausführungs- und Durchführungsvorschriften

1. Die Wiedergutmachungsbehörden werden durch Auführungsverordnung bestimmt.

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Unless otherwise provided in this Law, or ordered by Mintary Government, the Minister President of each State of any Ministers designated by him, shall issue the legal and the mistrative regulations necessary for the implementation of this Law.

#### ARTICLE 93

#### Jurisdiction of German Courts

1 German Courts are hereby authorized to exercise attraction in civil cases arising under this Law against any stateless person having the assimilated status of United Nations displaced persons or against any national of the United Nations not falling within categories (3), (4), (5) of Section 10 (b) in Article VI of Military Government Law No. 2, as amended or as hereafter amended.

2. German Courts are hereby authorized to exercise parisdiction in cases involving offenses against any of the provisions of Articles 73 to 77 of this Law by persons not exempted from the jurisdiction of the German Courts under Section 10 (to in Article VI of Military Government Law Nr. 2 or amended or as hereafter amended.

# ARTICLE 94 Official Text

The German text of this Law shall be the official text and the provisions of Paragraph 5 of Article 11 of Military Government Law No. 4, as amended, shall not apply.

# · ARTICLE 95 Effective Date

This Law shall become effective in Bavaria, Bremen, liesse and Wuerttemberg-Baden on 10. November 1947.

Approved: 10 November 1947

BY ORDER OF MILITARY GOVERNMENT

2. Soweit nichts anderes in diesem Gesetz bestimmt ist oder von der Militärregierung angesidnet wird erden die zur Durchführung des Gesetzes erforderlichen Reinste und Verwaltungsvorschriften vom Ministerpräsidenten eines Landes oder den von ihm bestimmten Staatsministers erlassen.

#### ARTIKEL 93

#### Zuständigkeit der deutschen Gerichte

1. Die deutschen Gerichte werden hiermit ermächtigt, die Gerichtsbarkeit in Zivilsachen, die diesem Gesetz unterliegen, gegen Staatenlose, die als verschleppte Personen einer der Vereinten Nationen gelten, oder gegen Staatsangehörige der Vereinten Nationen auszuüben, sofern diese nicht unter eine der in Nr. (3), (4) oder (5) der Ziffer 16 (b) in Artikel VI des Gesetzes Nr. 2 der Militärregierung (in seiner jeweils geltenden Fassung) genannten Personengruppen fallen.

2. Die deutschen Gerichte werden hiermit ermächtigt die Gerichtsbarkeit in Fällen von Zuwiderhandlungen gegen die Bestimmungen der Artikel 73 bis 77 dieses Gesetzes auszuüben, vorausgesetzt, daß der Täter von der Gerichtsbarkeit der deutschen Gerichte nicht gemäß Ziffer 10 (a) in Artikel VI des Gesetzes Nr. 2 der Militätregierung (in seiner jeweils geltenden Fassung) ausgenommen ist.

### ARTIL L 94

#### Maßgeblieber Text

Der deutsche Text dieses Gesetzes ist der amtliche Text; die Bestimmungen des Absatzes 5 des Artikels 11 des Gesetzes Nr. 4 der Militärregierung (in seiner geänderten Fassung) finden keine Anwendung.

## ARTHEEL 95 Inkrafttreten

Dieses Gesetz trift in den Ländern Bayern, Bremen, Hessen und Württemberg-Baden am 10. November 1947 in Kraft.

IM AUFTRAGE DER MILITÄRKEGIERUNG

Bestätigt: 10. November 1947

FOX GLYNN & MELAMED 299 PARK AVENUE NEW YORK, NEW YORK 10017 ATTORNEYS AND COUNSELLORS ALD T. FOX AT LAW ROBERT B. GLYNN TELEPHONE: (212) 593-6600 DAVID J. MELAMED TELEX: NO 12-6587 JOSEPH D. BECKER CABLE ADDRESS: GLYNFOX JOHN R. HORAN MICHAEL F. JOHNSTON RAYMOND F. STECKEL April 22, 1975 Nathaniel Fensterstock, Esq. Counsel to U. S. Court of Appeals Second Circuit U. S. Court House, Foley Square New York, N. Y. 10007 Dreyfus v. Von Finck Re: Docket No. 75-7135 Dear Mr. Fensterstock: The above appeal involves an action for restitution and damages arising out of defendants alleged misconduct in wrongfully acquiring plaintiff's property under duress and without adequate consideration in Nazi Germany. Federal jurisdiction was asserted to exist because the defendants' conduct violated several treaties to which the United States and Germany were parties or adherents. The District Court concluded that the treaties alleged did not provide an adequate basis for federal jurisdiction, and dismissed the complaint. This appeal followed. In preparing appellant's brief, counsel for appellant have concluded that there is a non-treaty basis for jurisdiction over the instant controversy, to wit: Law No. 59, "Restitution of Identifiable Property," promulgated by the American Military Government in Germany in 1947. The litigation below and the District Court's decision were limited to the question of whether this action arose out of the named treaties, and the court below did not purport to consider or decide whether a controversy such as this might be founded on Law No. 59. Under these circumstances plaintiff would be free, regardless of the outcome of this appeal, to commence a new action in federal court founded on Law No. 59 and alleging the particular facts relevant to that jurisdictional basis.

Counsel for appellants believe, however, that it might be inefficient to make the underlying controversy the subject of successive or simultaneous law suits, and that another method of dealing with this situation might be preferable. We have conferred with counsel for appellees, and they have indicated that it is their position that the District Court did in fact consider and reject the contention that jurisdiction could be founded on Law No. 59.

Under these circumstances we wish to request the assistance of a meeting between counsel for the parties and counsel to the Court to consider the appropriate resolution of this problem, and to confirm that pursuant to my request you have scheduled a conference for April 28, 1975 at 12:00 p.m. in your offices. Counsel for defendants has said he will attend.

Yours sincerely,

John R. Horan

JRH:1s

cc: Eric Schnapper, Esq.
Co-Counsel for Plaintiff, Appellant

Walter, Conston, Schurtman & Gumpel Attorneys for Defendants, Appellees



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILLY DREYFUS,

AFFIDAVIT OF DEFENDANTS-

Plaintiff-Appellant : APPELLEES IN OPPOSITION TO PLAINTIFF-APPELLANT'S MOTIONS

-against-

: TO REMAND AND FOR ADDITIONAL

TIME

AUGUST VON FINCK, et al.,

Defendants-Appellees: No. 75-7135

STATE OF NEW YORK SS.: COUNTY OF NEW YORK

ALAN KANZER, being duly sworn, deposes and says:

- I am a member of the Bar of this Court and of the firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for defendants-appellees August von Finck ("Finck") and Merck, Finck & Co., ("Merck, Finck").
- 2. I submit this affidavit on behalf of defendants and in opposition to plaintiff's alternative motions to remand this case to the United States District Court or for additional time in which to file his brief on appeal.
- I make this affidavit in my capacity as an attorney because all relevant facts are pleaded in plaintiff's complaint, are matters of record in this Court, or are set forth in the annexed exhibits, which, in view of their number and bulk, and for the convenience of the Court, are under separate cover.
  - Defendants oppose plaintiff's motions because:
    - Plaintiff has already filed two complaints a) and had three hearings in the district court

during which he had ample opportunity to argue the applicability of Military Government Law No. 59 ("MGL No. 59") which he now claims should be considered by the district court on a remand;

- was, in fact, called to the attention of the district court by the defendants during the arguments below, when we pointed out that MGL No. 59 was intended to implement the Four Power Occupation Agreement, which was one of the t eaties pleaded by plaintiff as a basis of jurisdiction in both his original and amended complaints;
- c) MGL No. 59 does not furnish a basis for federal jurisdiction nor does plaintiff state a federal claim under MGL No. 59;
- d) This Court can determine the applicability of MGL No. 59 in deciding the pending appeal since MGL No. 59 was raised in the court below;
- e) Plaintiff should be required to proceed with his long-delayed appeal for the dismissal of his amended complaint instead of being granted a further hearing in the district court.

# THE NATURE OF THIS ACTION

5. This is an action commenced by a citizen and resident of Switzerland against two citizens and residents of West

Germany, based on events which all took place in Germany more than 25 years ago.

6. Plaintiff purported to obtain jurisdiction over the defendants by attaching their bank accounts in New York and by mailing copies of the summons and complaint to the defendants in West Germany.

# THE COMPLAINT

- as Exhibit 1, alleges that prior to 1938 plaintiff was principal owner and manager of J. Dreyfus & Co., a private banking firm with principal place of business in Berlin, Germany; that in 1938 the Nazis compelled plaintiff, who was Jewish, to transfer his banking firm to defendants at a completely unfair, illegal, inadequate and unequitable price; that plaintiff and his family were forced to leave Germany; that plaintiff sought appropriate compensation from the defendants after the end of World War II and entered into a settlement agreement in 1948, which defendants thereafter allegedly refused to honor and, in fact, renounced.
- 8. The complaint seeks damages in excess of \$1,500,000 and an accounting.
- 9. The complaint does not offer any explanation of why plaintiff waited from 1948 to 1973 to bring the present action.
- 10. While it is not my intention to go into the merits of plaintiff's claims at this stage of the case, defendants would be prepared to show at the appropriate time that such claims are

statute of limitations, laches and other defenses.

PROCEEDINGS IN THE DISTRICT COURT

and on January 15, 1974, plaintiff obtained an <u>ex parte</u> order of attachment from the district court in the amount of \$150,000, which plaintiff used to tie up defendants' New York bank accounts.

12. In order to free their bank accounts, and without in any way conceding the validity of the attachment or consenting to jurisdiction, the defendants posted a bond of \$150,000 and the attachment was vacated by a consent order dated February 5, 1974.

13. Plaintiff's New York attorney then purported to effect serve of process on the defendants in Germany by sending them copies of the summons and complaint by registered airmail which was received on February 19, 1974.

14. On March 12, 1974, defendants moved, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss the complaint on the following grounds:

- A. Lack of subject matter jurisdiction;
- B. Lack of personal jurisdiction;
- C. Forum non conveniens; and
- D. Insufficient service of process.

A copy of defendants' Notice of Motion and Affidavit in support of defendants' motion to dismiss plaintiff's complaint is annexed as Exhibit 2, and defendants' reply affidavit in support of defendants' motion is annexed as Exhibit 3.

15. Tefendants subsequently waived their challenge to

Plaintiff consistently failed to advise the district court and this Court that in 1951 he received a very substantial sum in full satisfaction of all of his claims in a settlement approved in open court by the Court of Restitution Appeals, a court set up by the United States pursuant to Military Government Law No. 59. See ¶35 of this affidavit.

sufficiency of service and deferred, without prejudice, their claim of lack of personal jurisdiction and forum non conveniens.

16. The basic thrust of defendants' motion, as amended, was that the district court lacked jurisdiction over the subject matter of the action because the action was between aliens and did not raise any federal questions.

17. Judge Charles L. Brieant, in a Memorandum Decision dated May 20, 1974, a copy of which is attached as Exhibit 4, held that it had subject matter jurisdiction, but nevertheless dismissed the complaint for failure to state a claim for relief. He expressly held that the treaties on which plaintiff relied did not give rise to private causes of action and that the court could not examine the legitimacy of the acts of the German government because of the Act of State doctrine.

18. On May 30, 1974, plaintiff petitioned the district court for rehearing and reargument. Defendants opposed the petition on the grounds both that the complaint was properly dismissed for failure to state a claim for relief and that the district court lacked subject matter jurisdiction. Defendants' memorandum in opposition to plaintiff's petition for rehearing and reargument is annexed as Exhibit 5.

19. By order dated June 26, 1974, a copy of which is annexed as Exhibit 6, plaintiff's motion to reargue was granted, and the May 20, 1974 memorandum decision was modified to provide:

"Plaintiff may, if so advised, serve and file an amended complaint within 30 days following the date of the order herein. Such amended complaint, if any be served, shall allege with particularity specific provisions of such treaty or treaties relied upon. If such amended pleading is not so served, the clerk shall enter judg-

ment thereafter in favor of defendants pursuant to Rule 58 FRCIVP." (Emphasis Added)

- 20. On July 24, 1974, plaintiff served defendants with an amended complaint, a copy of which is annexed as Exhibit 7. The amended complaint was substantially similar to the original complaint, and identified the treaties, and provisions thereof, on which jurisdiction was purportedly based, as:
  - A. Articles 1, 46 and 41 of The Hague Treaty of October 18, 1907, as well as the preamble to such treaty;
  - B. the entire Kellogg-Briand Pact;
  - C. Articles 124, 227-230, 231 and 300 of the Treaty of Versailles; and
  - D. the Four Power Occupation Agreement.
- 21. Thereafter, defendants, on September 11, 1974, moved to dismiss plaintiff's amended complaint principally on the grounds of lack of subject matter jurisdiction and failure to state a claim. Copies of defendants' Notice of Motion and Supporting Affidavit, Supporting Memorandum and Reply Memorandum are annexed as Exhibits 8, 9 and 10 respectively.
- randum decision, a copy of which is annexed as Exhibit 11, dismisser plaintiff's amended complaint for failure to state a claim on which relief can be granted. Alternatively, the district court found that the court could not consider plaintiff's action because of the Act of State doctrine.

# THE PROCEEDINGS IN THIS COURT

- 23. On February 18, 1975, plaintiff served and filed a Notice of Appeal, a copy of which is annexed as Exhibit 12.
- 24. Pursuant to Scheduling Order Number 1, a copy of which is annexed as Exhibit 13, plaintiff's appellate brief was required to be filed on or before April 24, 1975.
- 25. On April 18, 1975, plaintiff moved this Court for a extension of time to file its brief until May 15, 1975. Defendants did not oppose the motion. The ground for the motion was that plaintiff's counsel concluded that plaintiff had failed to bring to the attention of the district court a question of law allegedly necessary for the resolution of the case, and wished an opportunity to meet with the counsel for the Court to discuss counsel's alleged oversight. A copy of plaintiff's motion papers is annexed as Exhibit 14.
  - 26. This Court, by Scheduling Order #2, a copy of which is annexed as Exhibit 15, granted plaintiff's motion and ordered that plaintiff file his appellate brief on or before May 15, 1975.
  - 27. Counsel for plaintiff and defendants met with Nathaniel Fensterstock, Esq., Counsel to the Court, on April 28, 1975, but did not resolve their dispute.
  - 28. On May 15, 1975, plaintiff made the pending two motions to remand or, in the alternative, for additional time to file plaintiff's brief on appeal.
  - 29. Defendants moved, on May 22, 1975, with plaintiff's consent, to adjourn the hearing date on plaintiff's motion from June 3, 1975 to June 17, 1975. A copy of defendants' motion papers is annexed as Exhibit 16.

# PLAINTIFF'S MOTION TO REMAND

- 30. Plaintiff's counsel claim that, during the course of preparing plaintiff's appeal brief, they discovered that Military Government Law No. 59 (MGL No. 59) might furnish a basis for jurisdiction over certain aspects of the matters alleged in plaintiff's amended complaint. Counsel further asserts that MGL No. 59 was not considered by the district court, and that the facts necessary to base a claim on MGL No. 59 were not alleged in the complaint.
- 31. Before addressing myself either to the merits of plaintiff's contention that the district court would have jurisdiction over a claim based on MGL No. 59, or that remanding the case is the proper method for raising that issue, let me briefly point out some of the material facts which plaintiff carefully does not bring to this Court's attention.

# Plaintiff is guilty of laches

- 32. Although plaintiff's counsel seek to imply that counsel just discovered the existence of MGL No. 59, such is not the case.
- 33. MGL No. 59, initially promulgated November 10, 1947, and printed in 12 FR 7983 (11/29/47), provided for a comprehensive set of restitution laws to enable people who were wrongfully deprived of property by Germany for reasons of race, religion, nationality, ideology, or political beliefs, to regain their property or receive appropriate compensation.
- 34. To implement and enforce the Restitution Laws, MGL
  No. 59 established two tiers of courts in the American occupied
  sections of Germany: a German trial court, known as the Restitution
  Chamber, and an American appellate court, initially known as the

Board of Review and subsequently renamed the Court of Restitution Appeals ("CORA").

35. Pursuant to MGL No. 59, plaintiff filed a restitution action in the Restitution Chamber, appealed its decision to CORA, and settled the claim pursuant to a stipulation of settlement read into the record in open court before CORA, which as previously mentioned, was a United States court, staffed by United States citizens who were appointed by the United States to sit as judges in Germany in restitution cases. Copies of English translations of the 1951 decision of CORA in the case of Association J.

Drevfus & Co., et al., v. Merck, Finck & Co., et al., and the parties' settlement in that action are annexed as Exhibits 17 and 18 respectively.

36. Consequently, plaintiff has not only known of MGL No. 59 since at least 1951; he in fact invoked its benefits and commenced and settled an action against the very defendants in this case.

37. Nor can plaintiff's counsel plead ignorance of MGL No. 59. Defendants initially put them (and the district court) on notice of MGL No. 59 in defendants' reply affidavit in support of their motion to dismiss plaintiff's original complaint. (Exhibit 3). Attached to that affidavit, as Exhibit B thereto, was a copy of the aforesaid CORA decision.

38. Moreover, defendants squarely raised the issue of MGL No. 59 in their memorandum in opposition to plaintiff's petition for reargument (Exhibit 5) where they stated, at page 10:

"The Four Power Occupation Agreement is neither self-executing nor sufficiently precise nor detailed to permit judicial enforcement. It was implemented by Military Government Law No. 59 (the "Restitution Law"), which expressly authorized victims of Nazi laws to institute

restitution actions in Germany. Actions were initiated in local German courts called Restitution Chambers; the Court of Restitution Appeals ("CORA"), an American court in Germany, had exclusive jurisdiction of appeals. (cf. the 1951 CORA decision in the Dreyfus action, annexed as Exhibit B to defendants' reply affidavit by William Schurtman, sworn to April 26, 1974).

Since plaintiff himself invoked the benefits of the Restitution Law by suing the defendants and obtaining a disposition of the case in the Court of Restitution Appeals, it is most surprising that he overlooks the fact that the basis for that action was Military Government Law No. 59. not the Four Power Occupation Agreement."

- the benefits of MGL No. 59 in 1951 in Germany, and defendants specifically referred to MGL No. 59 both in their motion papers to dismiss plaintiff's complaint and in their memorandum of law in opposition to plaintiff's petition for reargument, plaintiff failed to plead MGL No. 59 either in his original complaint or in his amended complaint, even though the district court, in its order permitting plaintiff to file an amended complaint, required plaintiff to specifically set forth in his amended complaint all provisions of law on which plaintiff based his claim for relief.

  MGL No. 59 is not a basis for jurisdiction
- 40. Furthermore, MGL No. 59 can not serve as a basis for jurisdiction in the district court.
- 41. In the first place, MGL No. 59 established a self-contained set of rights and remedies. Article 56 of MGL No. 59 required that all claims for restitution be commenced on or before December 31, 1948. Plaintiff's action in the district court, of course, was not brought until December 12, 1973, almost 25 years

to the day after the expiration of the period of limitations set forth in MGL No. 59.

42. MGL No. 59 further granted exclusive jurisdiction over restitution claims to the Restitution Chambers and while plaintiff contends that he should not be bound by the 1951 decision of CORA, Amendment Number 3 to Article 69 of MGL No. 59 and Regulation Number 7 thereunder (both promulgated December 28, 1948 and printed at 15 PR 1547, 1548 [March 18, 1950]), provide:

"The United States Courts of the Allied High Commission for Germany shall have jurisdiction to review any decisions or any claim for restitution under this law and to take any action which they shall deem necessary or proper in respect thereof."

(MGL Amendment #3)

"Decisions of the Court of Restitution Appeals shall be final and not subject to further review." (Regulation #7, MGL No. 59)

43. Moreover, as defendants discuss in some detail in their accompanying memorandum of law, MGL No. 59 is not a "law" within the meaning of 28 U.S.C. §1331, and this case, in any event, does not involve a construction of MGL No. 59.

THE COURT'S INTEREST IN EFFICIENT DISPOSITION OF CASES

44. Plaintiff has, from the very outset of this action, engaged in a course of conduct which has consistently frustrated the principle that cases should be disposed of expeditiously. Although plaintiff commenced this action 18 months ago, and has already had three hearings in the district court, he still seeks to raise what he claims to be new issues on the very eve of the date his appeal brief is due.

45. Instead of prosecuting his appeal, plaintiff seeks

still a fourth hearing in the district court.

46. At some point, the Courts should call a halt to this piecemeal litigation, which imposes substantial expense and inconvenience on defendants. That time, it is respectfully submitted, has come in this case. Let the plaintiff either prosecute or drop his appeal.

Alan Kanzer

Sworn to before me this 13th day of June, 1975.

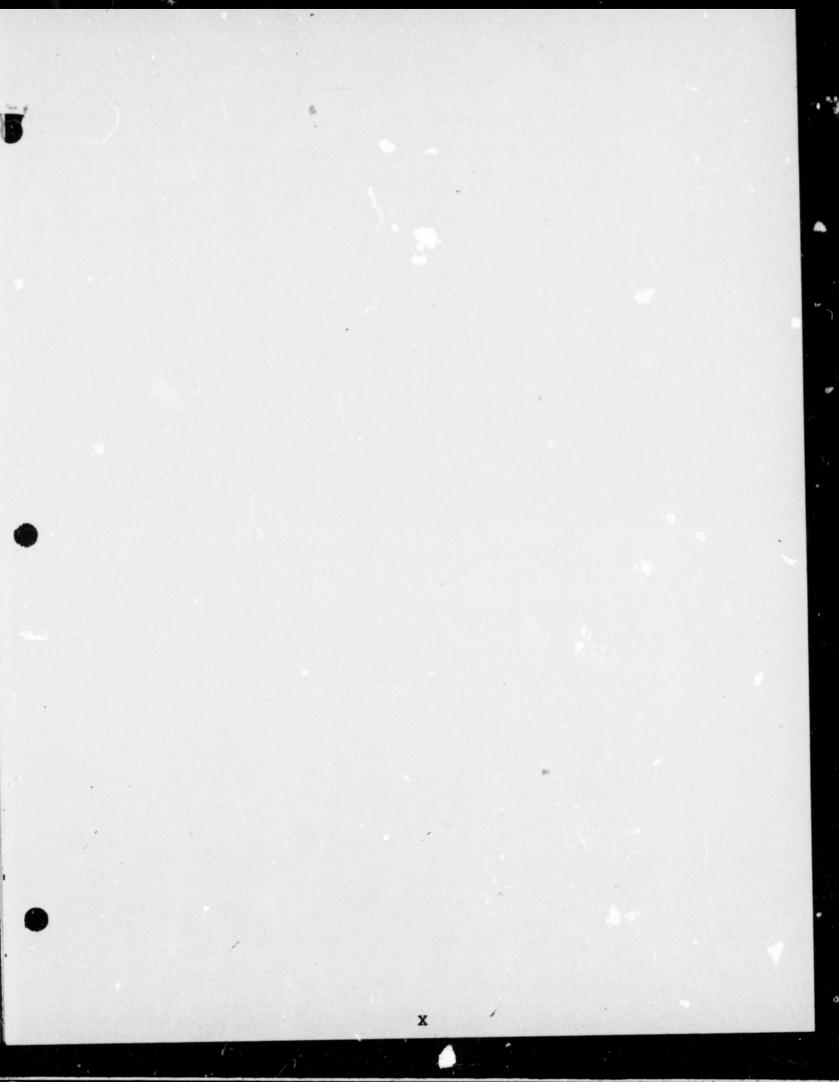
Theila ashley

SHEILA ASHBY Notary Public, State of New York

No. 31-5115230

Qualified in New York County

Commission Expires March 30, 1976





Toda. WALTER, CONSTON, SCHURTMAN & GUMPEL, P. C. ATTORNEYS AT LAW 330 MADISON AVENUE CABLES WALTCONLAW NEW YORK, N. Y. 10017 OTTO L. WALTER TELEX: 22 44 36 HENRY S. CONSTON WILLIAM SCHURTMAN (212) €32-2323 MUNICH OFFICE HENRY J. GUMPEL OTTO L. WALTER JON A. LEHMAN BRIENNERSTR. II NEVILLE ROSS 8 MUENCHEN 2 BALDWIN MAULL, JR. 1089 22 64 25 JUN 1 9 1975 JAMES SCHREIBER TELEX 052 29 57 ALAN KANZER DETLEF G. LEHNARDT LOUIS G. MARCUS Received By IN REPLY REFER TO RICHARD E. SCHNEYER 579 BERNARD R. DIAMOND FOX GLYNN & MELAMED PETER R. ENGELHARDT EBERHARD RÖF June 17, 1975 \*ADMITTED IN GERMANY \_MLY HAROLD C. HERMAN COUNSEL John Horan, Esq. Fox, Glynn & Melamed 299 Park Avenue New York, N.Y. 10017 Willy Dreyfus v. August Re: von Finck et al., No. 75-7135 Dear John: This will confirm the stipulation I made in open court this morning that the Court of Appeals may consider Military Government Law No. 59 in deciding your appeal. Sincerely. William Schurtman WS:sa cc: Eric Schnapper, Esq.